

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

3 IP INNOVATION, L.L.C. )  
4 and TECHNOLOGY LICENSING )  
CORP., )

5 Plaintiffs )

6 VS. )

7 RED HAT, INC. and )  
8 NOVELL, INC., )

Defendants )

) Civil Docket No.  
) 2:07-CV-447-RRR  
) April 26, 2010

) 9:00 A.M.

9  
10 TRANSCRIPT OF VOIR DIRE PROCEEDINGS  
BEFORE THE HONORABLE RANDALL R. RADER  
11 UNITED STATES CIRCUIT JUDGE

12 APPEARANCES:

FOR THE PLAINTIFF:

MR. JOSEPH A. CULIG  
MR. ARTHUR A. GASEY  
MR. PAUL C. GIBBONS  
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19 APPEARANCES CONTINUED ON NEXT PAGE:

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23 (Proceedings recorded by mechanical stenography,  
24 transcript produced on CAT system.)  
25

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2 FOR THE DEFENDANT:

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10 \* \* \* \* \*

11 P R O C E E D I N G S

12 (Jury in.)

13 THE COURT: Thank you. Please be seated.

09:32 14 Ladies and Gentlemen, we're here to  
09:32 15 discuss a patent matter. I understand you've had a  
09:32 16 little instructions in patent law and what that might  
09:32 17 entail, but I think what we ought to do this morning, as  
09:32 18 we get started, is make sure you know all these  
09:32 19 wonderful people here in front of you. So let's start  
09:32 20 with the Plaintiffs.

09:32 21 And, Mr. Gasey, would you be kind enough  
09:32 22 to introduce yourself and your colleagues and who you  
09:32 23 represent a little bit.

09:32 24 MR. GASEY: Actually, with me here is  
09:32 25 Mr. Wesley Hill, and since he's the local counsel, we're

09:33 1 going to have him go ahead and introduce everybody.

09:33 2 THE COURT: Mr. Hill, please take over.

09:33 3 MR. HILL: Thank you, Your Honor. Good  
09:33 4 morning, Your Honor. It's a pleasure to see you.

09:33 5 Ladies and Gentlemen, good morning. Thank  
09:33 6 you for being here today. My name is Wesley Hill. I  
09:33 7 represent the Plaintiff in this lawsuit. The Plaintiff  
09:33 8 is IP Innovation, LLC and Technology Licensing  
09:33 9 Corporation. Those are my clients.

09:33 10 With me here at the table is Mr. Gasey,  
09:33 11 who you just met, Mr. Art Gasey.

09:33 12 Art, will you stand up?

09:33 13 Mr. Gasey will be an attorney you'll be  
09:33 14 hearing from in this case extensively. He'll be our  
09:33 15 lead lawyer.

09:33 16 Also, here at the table is Ms. Katie  
09:33 17 Dickman. Ms. Dickman is an assistant with us. She's  
09:33 18 going to keep us straight during the course of the  
09:33 19 trial.

09:33 20 We also have Mr. Paul Gibbons, who's an  
09:33 21 attorney with Mr. Gasey. They're law partners in  
09:33 22 Chicago, Illinois. Also, partners with them, Mr. Paul  
09:33 23 Vickrey, who you'll also be hearing from during the  
09:33 24 case.

09:33 25 We appreciate you folks being here. We

09:34 1 know it's always a hardship and an imposition to show up  
09:34 2 for jury service. We know we're taking your time. I  
09:34 3 appreciate you being here, and I look forward to those  
09:34 4 of you, who are selected for the jury, giving us an  
09:34 5 opportunity to present our case to you.

09:34 6 Thank you.

09:34 7 Thank you, Your Honor.

09:34 8 THE COURT: Thank you, Mr. Hill.

09:34 9 Mr. Krevitt, do I get to ask you to do the  
09:34 10 same for the Defendants or not?

09:34 11 MR. KREVITT: Good morning, Your Honor.

09:34 12 I'm going to ask Mr. Reiter --

09:34 13 THE COURT: Okay.

09:34 14 MR. KREVITT: -- who will be conducting  
09:34 15 this process.

09:34 16 THE COURT: I'm 0 for 2 getting the right  
09:34 17 person.

09:34 18 MR. REITER: Good morning, Ladies and  
09:34 19 Gentlemen. My name is Mark Reiter. I'm an attorney  
09:34 20 from Dallas. I am from Texas. My accent is not quite  
09:34 21 as thick as Mr. Hill's, but I'm not too far from here.

09:34 22 With me today is my partner, Josh Krevitt.

09:34 23 MR. KREVITT: Good morning.

09:34 24 MR. REITER: You'll be seeing a bunch of  
09:34 25 him.

09:34 1 And also some colleagues, Robert Vincent,  
09:34 2 who works with me in Dallas, and Amy LaValle, who works  
09:34 3 with me in Dallas.

09:35 4 And I want to echo Mr. Hill's thanks for  
09:35 5 y'all coming out here today, your time. We know it is  
09:35 6 an imposition. We know it takes valuable time away from  
09:35 7 your children, your job, but it is an important task.  
09:35 8 And we do appreciate very much you showing up, and we  
09:35 9 appreciate very much those of you who will serve on the  
09:35 10 jury.

09:35 11 Thank you, Your Honor.

09:35 12 THE COURT: Thank you, Mr. Reiter.

09:35 13 I also have an accent, but I'm afraid it's  
09:35 14 not from Texas. I don't suppose I could hide that from  
09:35 15 you anyway, but the Court welcomes you and appreciates  
09:35 16 your service.

09:35 17 What we're going to do now is I'm going to  
09:35 18 pose some questions to you, and I'm going to ask you to  
09:35 19 raise your hand if your answer to the question is yes.

09:35 20 For instance, I'll ask you in a minute if  
09:35 21 you know any of these people you see seated in front of  
09:36 22 you, either in the witness box or at the counsel tables.  
09:36 23 And if you know any of them or recognize them or think  
09:36 24 you know them, then you'll raise your hand. And I might  
09:36 25 then inquire further of you how you know them or why you

09:36 1 think you've seen them or was it on TV or what; you  
09:36 2 know, just what your connection is.

09:36 3 If there's some -- I'm going to ask you at  
09:36 4 some point, by the way, if you've ever been in a lawsuit  
09:36 5 or sued someone, and if there's anything embarrassing or  
09:36 6 that you'd like to just mention to me alone, that's easy  
09:36 7 to do, too. We can just arrange for you to come up here  
09:37 8 and whisper in my ear.

09:37 9 And we want to make this process very easy  
09:37 10 for you, and we want to make sure that we have an  
09:37 11 opportunity to get to know you a bit before we select 12  
09:37 12 of you who will sit here and perform the absolutely  
09:37 13 essential function of a juror in our governmental  
09:37 14 system.

09:37 15 It's a great honor for us to serve with  
09:37 16 you in this capacity, and it's one of -- really, the  
09:37 17 highest honors you can receive as a citizen of the  
09:37 18 United States, to be entrusted with helping the United  
09:37 19 States resolve important disputes like this.

09:37 20 Well, let's not spend too much more time.  
09:38 21 Let's just dive right in and let me ask some questions.

09:38 22 There's one other thing I want to tell  
09:38 23 you. I sometimes refer to myself as the Court. Well,  
09:38 24 the Court had knee surgery last Thursday, so every now  
09:38 25 and then the Court is going to get up and stand behind

09:38 1 this chair. I'm not -- you shouldn't think I'm  
09:38 2 objecting to anything that the jury -- that the  
09:38 3 witnesses are saying or that the attorneys are saying.  
09:38 4 It's just me stretching my leg, all right?

09:38 5 So don't be alarmed if I get up and walk  
09:38 6 around back here a little bit; I'm just accommodating a  
09:38 7 sore knee.

09:38 8 Well, let's start with our first question.  
09:38 9 Remember, if the answer is yes, you'll just raise your  
09:38 10 hand. And then I might ask each of you who raised your  
09:38 11 hand to respond further.

09:39 12 Let me ask that question I suggested. Do  
09:39 13 any of you recognize any of the -- start with the  
09:39 14 attorneys. You had them introduced to you before, but  
09:39 15 there's Mr. Gasey, Mr. Gibbons, Mr. Vickrey, Mr. Hill,  
09:39 16 Mr. Culig, Mr. Haynes. Some of these are corporate  
09:39 17 representatives as well.

09:39 18 Mr. Haynes, Mr. Cooper, Mr. Henderson,  
09:39 19 Ms. Dickman, Ms. Harper, Ms. Martin, Mr. Zimmerman,  
09:39 20 Mr. Gemini on the one side.

09:39 21 On the other side, Mr. Krevitt,  
09:39 22 Mr. Reiter, Mr. Lyon, Ms. LaValle, Ms. Jalali,  
09:39 23 Mr. Vincent, Mr. Barns, Mr. Stewart, Ms. Wilkins.

09:40 24 Do you recognize any of those persons or  
09:40 25 names? If so, please raise your hand.

09:40 1                   There's one -- there's a person right  
09:40 2 here. Excuse me, ma'am. Could you stand so we could  
09:40 3 hear you?

09:40 4                   Do you recognize someone?

09:40 5                   JUROR HEBERT: She (indicates) looks  
09:40 6 familiar, but I'm not positive. If so, I just think  
09:40 7 that I might have saw her the last time I was here.

09:40 8                   THE COURT: Okay. While you're on that  
09:40 9 subject, why were you here last time?

09:40 10                  JUROR HEBERT: I don't really remember. I  
09:40 11 didn't get picked.

09:40 12                  THE COURT: Were you in a jury pool?

09:40 13                  JUROR HEBERT: Yes.

09:40 14                  THE COURT: Did you get selected for the  
09:40 15 jury?

09:40 16                  JUROR HEBERT: I made it to the box.

09:40 17                  THE COURT: You made it to the -- were  
09:40 18 you -- did you -- I will ask all of you this question  
09:40 19 later, but let's deal with you.

09:40 20                  Have you -- did you participate in the  
09:40 21 jury then?

09:41 22                  JUROR HEBERT: No.

09:41 23                  THE COURT: Did you -- so you did not  
09:41 24 serve on the jury; you were just in the box and then  
09:41 25 excused?



09:41 1 JUROR HEBERT: Yes.

09:41 2 THE COURT: Your name again?

09:41 3 JUROR HEBERT: Sharon Hebert.

09:41 4 THE COURT: Nice to meet you, Ms. Hebert.

09:41 5 So I can assume that none of the rest of  
09:41 6 you recognize anyone.

09:41 7 Thank you.

09:41 8 Have you heard anything about this case?

09:41 9 Once again, this is the case of IP  
09:41 10 Innovation versus Red Hat. Have you heard anything  
09:41 11 about this case, read anything about it, have any  
09:41 12 association with it in any way?

09:41 13 I see no hands.

09:41 14 Let's go on to the next and rather  
09:41 15 important question. This case will go a week, meaning  
09:42 16 we'll be here through Friday maybe. It's a possibility  
09:42 17 we could even go a day next week, but that would require  
09:42 18 you to be here from 8:30 to 5:30 each of those days.

09:42 19 Is there any reason that you could not  
09:42 20 serve for that period of time? If there is a reason,  
09:42 21 please raise your hand.

09:42 22 Okay. No. 5, could you stand and give us  
09:42 23 your name?

09:42 24 JUROR WALKER: Clarence Walker.

09:42 25 THE COURT: Yes, Mr. Walker?

09:42 1 JUROR WALKER: I'm currently in school in  
09:42 2 a graduate program. It's online, so the timing is  
09:42 3 varied, but quite a bit of work and discussions we have  
09:42 4 to participate in regularly, so...

09:42 5 THE COURT: I understand. Is there a way  
09:42 6 for you to tape or otherwise deal with any classes that  
09:43 7 may occur?

09:43 8 JUROR WALKER: That's not a problem, sir.  
09:43 9 The problem is just the amount of work. The assignments  
09:43 10 that are due next week --

09:43 11 THE COURT: You'd have to catch up?

09:43 12 JUROR WALKER: Well, there's no catching  
09:43 13 up. They're due at a certain time, and if they're not  
09:43 14 in, they're --

09:43 15 THE COURT: If you get a note from me, do  
09:43 16 they -- does that help or does it hurt maybe?

09:43 17 JUROR WALKER: I don't know.

09:43 18 THE COURT: You don't know.

09:43 19 I have on occasion reminded employers, and  
09:43 20 in this case educators, that they have a duty to help us  
09:43 21 as well as your duty. So I would give you that note, if  
09:43 22 necessary.

09:43 23 JUROR WALKER: Yes, sir. I believe my  
09:43 24 professor would be understanding. I'm not sure he has  
09:43 25 the parameters under the school to.

09:43 1 THE COURT: Okay. Well, I think schools  
09:43 2 usually listen to courts, but not always. But thank you  
09:44 3 very much, sir, for your answer.

09:44 4 Now, I saw another hand or two.

09:44 5 JUROR HEBERT: Me, again.

09:44 6 THE COURT: Okay. Yes, let's hear from  
09:44 7 you.

09:44 8 JUROR HEBERT: You're going to laugh at  
09:44 9 me, too.

09:44 10 THE COURT: No, we never laugh.

09:44 11 JUROR HEBERT: Oh, thank you.

09:44 12 This sounds ridiculous, but before God,  
09:44 13 I'm the only one that can do my job.

09:44 14 THE COURT: What's your job again, ma'am?

09:44 15 JUROR HEBERT: I work for a radio station,  
09:44 16 KJTX, and do the programming of the -- the inputting of  
09:44 17 the data into the computer that goes on the air. And  
09:44 18 our -- the problem was that we've changed -- the owners  
09:44 19 are the managers, and we've changed one set of owners to  
09:44 20 another set. And the new set don't know how to do  
09:44 21 anything, haven't learned. And I tried to do as much as  
09:44 22 I could last week.

09:44 23 THE COURT: These attorneys think the same  
09:44 24 thing about me. They don't think I know how to do  
09:45 25 anything.

09:45 1 JUROR HEBERT: But that's --

09:45 2 THE COURT: Okay. Thank you, ma'am.

09:45 3 Thank you very much.

09:45 4 There was another hand. Yes, ma'am?

09:45 5 JUROR SNOWDEN: This is work-related in a  
09:45 6 way, and I'm a dental hygienist, and I have patients  
09:45 7 that will have to be rescheduled. So it just  
09:45 8 inconveniences more than me for the rest of the week.  
09:45 9 My employers will let me off, but it's a major  
09:45 10 inconvenience for the people that I'm supposed to be  
09:45 11 seeing this week.

09:45 12 THE COURT: Helping, okay. Thank you,  
09:45 13 ma'am, very much.

09:45 14 I assume those could be rescheduled, but  
09:45 15 it's an inconvenience; is that correct?

09:45 16 You can just nod your head. I notice  
09:45 17 you're saying yes. Thank you.

09:45 18 Our next question: Do you or anyone in  
09:45 19 your family have any education or background in computer  
09:46 20 science? If so, raise your hand. Computers, computer  
09:46 21 science, anything where you feel particular familiarity  
09:46 22 with the computer environment.

09:46 23 There's a hand here and one in the back --  
09:46 24 three hands. Let's start in front.

09:46 25 JUROR RYAN: I took a few computer classes

09:46 1 in college. I would hardly say I'm proficient, but --  
09:46 2 and probably the language is even outdated now, but just  
09:46 3 in programming. And it was in engineering classes.

09:46 4 THE COURT: Thank you very much, ma'am.  
09:46 5 Thank you. And your name again was?

09:46 6 JUROR RYAN: Misty Ryan.

09:46 7 THE COURT: Misty Ryan. Thank you.  
09:46 8 And there was a gentleman behind

09:46 9 Ms. De-Ron there.

09:46 10 JUROR STEPHENSON: My name is David  
09:47 11 Stephenson, and I have had courses in computers and  
09:47 12 programming. And my wife is a -- I call her a technical  
09:47 13 guru, so -- her job is in technology for the school  
09:47 14 district.

09:47 15 THE COURT: Now, you say you had  
09:47 16 courses --

09:47 17 JUROR STEPHENSON: Yes, sir. The line of  
09:47 18 work I was in before I retired, I had computer  
09:47 19 programming courses that would -- right now, they would  
09:47 20 be out of date, because that was back in the '80s, early  
09:47 21 '80s. So I have some knowledge but not that much. And  
09:47 22 my wife has quite a bit of knowledge about...

09:47 23 THE COURT: Okay. We'll get to this  
09:47 24 later, but you would understand that you wouldn't  
09:47 25 discuss the case with your wife at all?

09:47 1 JUROR STEPHENSON: Yes, sir, I wouldn't.

09:47 2 THE COURT: Thank you, sir.

09:47 3 JUROR STEPHENSON: Yes, sir.

09:47 4 THE COURT: And I see there's a lady with  
09:47 5 her hand up here on the far side.

09:48 6 JUROR BRASHER: Mine is the same as  
09:48 7 theirs. I took computer science in college, but it's  
09:48 8 been many, many years ago. And those languages are now  
09:48 9 outdated.

09:48 10 THE COURT: What is your name again,  
09:48 11 ma'am?

09:48 12 JUROR BRASHER: Gina Brasher.

09:48 13 THE COURT: Ms. Brasher, thank you very  
09:48 14 much.

09:48 15 Okay. Let me ask if you -- no? You did  
09:48 16 mention that you had computers at your radio station.

09:48 17 JUROR HEBERT: Right. I took a course in  
09:48 18 college, but like them, it was so long ago I don't  
09:48 19 really consider that. I remember it. But my job,  
09:48 20 that's what I do. I deal with a lot of computers, but I  
09:48 21 only know enough to do what I need to do.

09:48 22 THE COURT: Thank you very much, ma'am.

09:48 23 I need to ask if you or your family has  
09:48 24 any education or work experience in legal matters or  
09:49 25 particularly patent law issues.

09:49 1 Hands that go up on legal matters --  
09:49 2 maybe -- yes, I see a lady in the third row there.

09:49 3 I'll get you next, sir.

09:49 4 Yes, ma'am?

09:49 5 JUROR BOLT: I am Linda Bolt. I was  
09:49 6 prelaw several years ago, multiple years ago in my  
09:49 7 degree, but I switched to business finance and  
09:49 8 accounting. And I also attended a two-day seminar with  
09:49 9 a patent attorney in Dallas along with some other  
09:49 10 inventors.

09:49 11 THE COURT: Oh. Tell me about the seminar  
09:49 12 just a little bit.

09:49 13 JUROR BOLT: Well, he basically just told  
09:49 14 us how to -- the process for getting a patent on our  
09:49 15 invention that we had. One of the interesting gentlemen  
09:49 16 that I was in there with had previously invented the  
09:49 17 artificial heart, and he was there with another  
09:49 18 invention, and he told about that.

09:49 19 It's a very, very lengthy and timely  
09:50 20 process, based on what all he was telling us. And there  
09:50 21 was a lot of research that we had to do before we  
09:50 22 actually acquired an attorney.

09:50 23 THE COURT: So did you feel like the  
09:50 24 things you saw on the film today were kind of old hat to  
09:50 25 you?

09:50 1 JUROR BOLT: Right, a little bit. I'm not  
09:50 2 an expert by any means.

09:50 3 THE COURT: But you have a little  
09:50 4 background. Thank you, ma'am.

09:50 5 There was a gentleman in front of you who  
09:50 6 raised his hand as well.

09:50 7 JUROR WHATLEY: My name is Reggie Whatley,  
09:50 8 and just by profession, my wife is currently a  
09:50 9 paralegal.

09:50 10 THE COURT: Oh, okay. What is your  
09:50 11 profession, sir?

09:50 12 JUROR WHATLEY: I'm a school teacher.

09:50 13 THE COURT: Great. What do you teach?

09:50 14 JUROR WHATLEY: Music.

09:50 15 THE COURT: Oh, my -- let's talk. I need  
09:50 16 some help. My rock band has trouble keeping the rhythm.  
09:50 17 Thank you.

09:51 18 Let me see. Let's go on to my next  
09:51 19 question. I want to ask if any of you have ever served  
09:51 20 on a jury before.

09:51 21 Now, I'll need to see hands. Oh, good, we  
09:51 22 have lots of questions here. Let's start right up here  
09:51 23 in front, and I'm going to ask you what kind of case and  
09:51 24 what was the verdict and how long ago.

09:51 25 JUROR C. WILSON: I'm Carol Wilson, and



09:51 1 I've been on two or three juries; one when I lived in  
09:51 2 Dallas and a couple since I've been in Cass County.  
09:51 3 They were civil court, property disputes.

09:51 4 THE COURT: Do you remember the verdict?

09:51 5 JUROR C. WILSON: One very emotional and  
09:51 6 one was not guilty.

09:51 7 THE COURT: Okay. That was -- was it a  
09:51 8 criminal-type case?

09:51 9 JUROR C. WILSON: No, it was a property  
09:52 10 dispute.

09:52 11 THE COURT: It was a property dispute.

09:52 12 JUROR C. WILSON: He said/she said. It  
09:52 13 was a not guilty.

09:52 14 THE COURT: And your jury said there was  
09:52 15 no damages?

09:52 16 JUROR C. WILSON: Exactly.

09:52 17 THE COURT: Okay. Do you remember -- you  
09:52 18 said there were more than one.

09:52 19 JUROR C. WILSON: As I say, they're all  
09:52 20 civil. I've not been on a criminal case. But they were  
09:52 21 all property disputes.

09:52 22 THE COURT: Do you remember the outcomes  
09:52 23 of any of the others?

09:52 24 JUROR C. WILSON: No.

09:52 25 THE COURT: Okay. Thank you very much.

09:52 1 That was very helpful.

09:52 2 I think the lady next to you had a --  
09:52 3 seeing her hand up.

09:52 4 JUROR ROBERTSON: I'm Linda Robertson, and  
09:52 5 it was a wreck, a car wreck. The man said he was  
09:52 6 guilty, but then we did the damages. And some damages,  
09:52 7 we rewarded and some we didn't.

09:52 8 THE COURT: So you kind of gave some  
09:52 9 relief but not everything?

09:52 10 JUROR ROBERTSON: Yeah. We thought some  
09:52 11 were right and some were wrong.

09:52 12 THE COURT: It was a car wreck case?

09:52 13 JUROR ROBERTSON: Yes, sir.

09:52 14 THE COURT: Thank you.

09:52 15 How long ago was that?

09:52 16 JUROR ROBERTSON: About two years ago.

09:52 17 THE COURT: Okay. Thank you.

09:53 18 I think the gentleman next to you was one  
09:53 19 as well.

09:53 20 JUROR ORR: Yes. My name is Ricky Orr,  
09:53 21 and it's been about nine months ago. It was a criminal  
09:53 22 case and found the man guilty. He had crack cocaine in  
09:53 23 his hat.

09:53 24 THE COURT: Okay. Thank you very much.

09:53 25 I need the hands again to see who else is

09:53 1 in -- okay. Let's come right along the border here.

09:53 2 JUROR WOLFE: My name is Jan Wolfe. I  
09:53 3 think it was about ten years ago, I served on a criminal  
09:53 4 case. It was a murder trial. And he was guilty. We  
09:53 5 convicted him.

09:53 6 THE COURT: Okay. Thank you for your  
09:53 7 service then.

09:53 8 And the next lady, I think, is also --

09:53 9 JUROR MILLER: My name is Beverly Miller.  
09:53 10 I served on a juror (sic) right here within the last two  
09:53 11 years. It was a patent dispute, and we found that the  
09:53 12 patent was not good.

09:54 13 THE COURT: You invalidated the patent?

09:54 14 JUROR MILLER: Invalidated, yes.

09:54 15 THE COURT: Thank you. That's a help,  
09:54 16 too, as well.

09:54 17 Were there other -- yes, the lady on  
09:54 18 the -- we finally missed you.

09:54 19 Excuse me. I shouldn't...

09:54 20 JUROR HILL: Willie Dean Hill. I served  
09:54 21 on a criminal jury where we found the guy guilty.

09:54 22 THE COURT: What kind of case?

09:54 23 JUROR HILL: Two drunks got in a fight,  
09:54 24 and one hit the other up side of the head, and he later  
09:54 25 died.

09:54 1 THE COURT: Thank you very much. Thank  
09:54 2 you.

09:54 3 JUROR HEBERT: You didn't miss me.

09:54 4 THE COURT: Oh, we didn't miss you.

09:54 5 JUROR HEBERT: It was about 20 years ago  
09:54 6 maybe. I don't know what kind of case it was, but a man  
09:54 7 was accused of child abuse, a 17-year-old and a man, but  
09:54 8 they settled, so we didn't have to make a decision.

09:54 9 THE COURT: Okay. Good. Thank you.

09:54 10 And I need the hands again, and we'll go  
09:54 11 over on this side.

09:55 12 JUROR POWER: James Power. I served on  
09:55 13 the county -- in Morris County for a dispute over a  
09:55 14 Rolex watch. And we found that -- I don't know how it  
09:55 15 really turned out. He wasn't -- it was over if it was a  
09:55 16 real Rolex watch or not, and the guy didn't know that  
09:55 17 what he sold was not a genuine Rolex.

09:55 18 THE COURT: Okay.

09:55 19 JUROR POWER: So no damages awarded.

09:55 20 THE COURT: No damages awarded. Thank you  
09:55 21 very much, sir.

09:55 22 Next, ma'am?

09:55 23 JUROR NASH: I'm Beth Nash from Linden,  
09:55 24 Texas. And it's probably been 12 years I was on a civil  
09:55 25 case, and it was also a property dispute. And I believe

09:55 1 the judge actually finally came up with the actual  
09:55 2 decision.

09:55 3 THE COURT: Do you remember what that was?

09:56 4 JUROR NASH: Just a property dispute like  
09:56 5 over property lines.

09:56 6 THE COURT: Oh, okay. And they redrew the  
09:56 7 line appropriately?

09:56 8 JUROR NASH: Yes, sir.

09:56 9 THE COURT: Thank you very much, ma'am.

09:56 10 JUROR COLLINS: Ron Collins. I was on a  
09:56 11 criminal case. A guy had stolen some checks and thought  
09:56 12 they were his, I guess, and we found him guilty.

09:56 13 THE COURT: All right. Thank you very  
09:56 14 much, sir.

09:56 15 Let's see. Across the aisle.

09:56 16 JUROR STEPHENSON: Again, David  
09:56 17 Stephenson. And I've served on a jury here in this  
09:56 18 court building about three or four years ago, and it was  
09:56 19 civil. A young man was suing a -- suing about his  
09:56 20 credit and so -- but we found against the young man.

09:57 21 THE COURT: Okay. Thank you.

09:57 22 Others who have been on a jury? Let's go  
09:57 23 back on this side.

09:57 24 Thank you.

09:57 25 JUROR BRASHER: Gina Brasher. And I live

09:57 1 in Ore City, Texas, which is in Upshur County. I've  
09:57 2 served on many juries, county, and I was on a grand  
09:57 3 jury, and I've served here once. It's probably been  
09:57 4 about 15 years ago, I guess.

09:57 5 It was a personal injury-type case, and we  
09:57 6 found -- we didn't award any damages in that case. The  
09:57 7 others have been -- I think there was one civil and  
09:57 8 several criminal, too, in Upshur County.

09:57 9 THE COURT: Okay. Thank you, ma'am.

09:57 10 JUROR LIGHTFOOT: My name is Judy  
09:57 11 Lightfoot. I have served on a criminal jury in Cass  
09:57 12 County. I believe it was aggravated assault about 15  
09:57 13 years ago, and we found him guilty.

09:58 14 And over 20 years ago, I served here as a  
09:58 15 juror. I believe it was an inmate suing the state, but  
09:58 16 after a day of testimony, he settled out. So we didn't  
09:58 17 serve any longer.

09:58 18 THE COURT: Thank you, ma'am.

09:58 19 JUROR BOLT: Linda Bolt. I was on a  
09:58 20 case -- a civil case in 1993. It was an auto accident.  
09:58 21 There were three insurance companies involved. The case  
09:58 22 trial lasted about a week and a half.

09:58 23 Halfway through, two of the insurance  
09:58 24 companies settled out of court, and we ended up awarding  
09:58 25 more than was asked for damages for the third insurance

09:58 1 company that saw the trial all the way through.

09:58 2 THE COURT: Okay. Thank you, ma'am.

09:58 3 JUROR M. WILSON: Mary Teresa Wilson.

09:58 4 I've served on three juries. One was two boys that had  
09:58 5 gotten into a fight; one was a car wreck; and the other  
09:58 6 was a theft charge hearing here in Marshall.

09:58 7 THE COURT: Okay. Do you remember any of  
09:58 8 the verdicts?

09:59 9 JUROR M. WILSON: The fight was not  
09:59 10 guilty; the car wreck was not guilty; and the theft was  
09:59 11 guilty.

09:59 12 THE COURT: Okay. Thank you very much.  
09:59 13 You remember quite well.

09:59 14 Others who -- there's several here. Thank  
09:59 15 you.

09:59 16 JUROR SNOWDEN: Katherine Snowden. I was  
09:59 17 picked. It was -- I believe we were just supposed to  
09:59 18 decide the sentence. I believe it was a forgery case in  
09:59 19 Cass County, probably around 20 years ago. We did not  
09:59 20 ever get to decide. It was settled.

09:59 21 We were waiting and it got settled before  
09:59 22 we had to do anything. And I don't remember what they  
09:59 23 settled for. He pled guilty.

09:59 24 THE COURT: Okay. Thank you, ma'am.

09:59 25 JUROR MCCANT: Maude McCant. I served on

09:59 1 jury duty in Cass County. It was a drug conviction. We  
09:59 2 did find the young lady guilty.

10:00 3 THE COURT: Thank you, ma'am.

10:00 4 JUROR IRVING: My name is Bloyce Irving.  
10:00 5 I served on a personal injury case, and I served on one  
10:00 6 that was dismissed on a personal injury case. The guy  
10:00 7 got half of what he asked for.

10:00 8 THE COURT: Okay. Thank you.

10:00 9 Have we gotten everyone on that question  
10:00 10 now? Anyone who did not get a chance to talk about  
10:00 11 prior jury service?

10:00 12 My next question: Has you or anyone in  
10:00 13 your family ever been sued or sued someone else in state  
10:00 14 or federal court?

10:00 15 Now, once again, this is one of those  
10:00 16 questions that if you'd prefer to come up and talk to me  
10:00 17 quietly, we can arrange that. But if you prefer just to  
10:00 18 mention it, we can -- openly, that will be fine, too.

10:01 19 There's one hand I see. Let's see some  
10:01 20 hands. I see one, two, three hands.

10:01 21 JUROR DRENNEN: My name is Frances  
10:01 22 Drennen, and I was in an auto accident. I was in an  
10:01 23 auto accident twice. It settled out of court.

10:01 24 And one time our family, we did go -- in  
10:01 25 the accident, we went to court, but they settled before



10:01 1 it got started.

10:01 2 THE COURT: Now, did they hit you or  
10:01 3 did --

10:01 4 JUROR DRENNEN: Yes, sir.

10:01 5 THE COURT: So in each case, you were the  
10:01 6 victim?

10:01 7 JUROR DRENNEN: Yes, sir.

10:01 8 THE COURT: And so you had sued them to  
10:01 9 recover your damages?

10:01 10 JUROR DRENNEN: Yes, sir.

10:01 11 THE COURT: Okay. Thank you. And that  
10:01 12 settled.

10:01 13 I think there's a gentleman here and a  
10:01 14 lady here (indicates). Let's start with the gentleman.  
10:01 15 Excuse me. We should do ladies first, but in this case,  
10:01 16 we'll start with the gentleman.

10:01 17 JUROR STABENO: William Stabeno. I was  
10:01 18 sued for an auto accident, and they ended up -- the  
10:01 19 insurance company paid them a couple thousand dollars  
10:01 20 and they dropped the suit.

10:02 21 THE COURT: Okay. It sounds like it was a  
10:02 22 pretty minor affair. Okay. Thank you.

10:02 23 And the lady here?

10:02 24 JUROR BRASHER: Gina Brasher. And I guess  
10:02 25 my suit is still pending. It has not gone to court yet.

10:02 1 My daughter was killed in an automobile accident 15  
10:02 2 months ago, and so all of this is still pending.

10:02 3 THE COURT: Oh, I'm very sorry to hear  
10:02 4 about that.

10:02 5 JUROR BRASHER: Thank you.

10:02 6 THE COURT: Okay. Thank you.

10:02 7 Anybody else who's sued or been sued?  
10:02 8 Again, we can do this in private, if you prefer.

10:02 9 There's a lady in front.

10:02 10 JUROR MILLER: I had to think about this a  
10:02 11 minute. Beverly Miller.

10:02 12 When I was 17 years old, I had a car  
10:02 13 wreck. We didn't go to court or anything, but I know  
10:02 14 there was a lawyer who got our hospital bills and stuff  
10:02 15 like that paid for. And my sister had to have plastic  
10:02 16 surgery on her forehead, and they paid for that. But I  
10:03 17 can't tell you how many years ago that was. I was 17; I  
10:03 18 know that.

10:03 19 THE COURT: Well, we're not going to  
10:03 20 inquire about the Court's record. This is one of those  
10:03 21 instances where I could maybe top some of you. But  
10:03 22 thank you, ma'am, very much.

10:03 23 Oh, good, the radio station.

10:03 24 JUROR HEBERT: I wasn't sure if this  
10:03 25 counted. One of my family members was part of a class

10:03 1 action pharmaceutical suit.

10:03 2 THE COURT: That counts.

10:03 3 JUROR HEBERT: You know, they ruled in  
10:03 4 favor of the -- whatever you call them, the Defendants.  
10:03 5 So she got a settlement.

10:03 6 THE COURT: Do you remember how much?

10:03 7 JUROR HEBERT: Maybe 20,000. It was a  
10:03 8 whole --

10:03 9 THE COURT: Okay. That gives us an idea.  
10:03 10 Thank you very much.

10:03 11 Anybody else? Did we get it all?

10:03 12 Thank you.

10:03 13 Now, it's typical sometimes that there are  
10:04 14 mock trials or jury focus groups. Attorneys can invite  
10:04 15 people to come to their office or to go to some place  
10:04 16 where they participate in a kind of a mock trial so that  
10:04 17 the attorneys can learn how to present their cases  
10:04 18 better, or they can study how jurors react to certain  
10:04 19 arguments.

10:04 20 Have any of you ever done this, been part  
10:04 21 of a mock jury sort of a situation?

10:04 22 Yes, ma'am?

10:04 23 JUROR HEBERT: Yes. It was a case where a  
10:04 24 gentleman that worked for a railroad had gotten injured  
10:04 25 on the job, and they didn't give him any benefits or

10:04 1 anything, so he sued them. And we ruled in favor of  
10:04 2 him.

10:04 3 THE COURT: That was kind of a mock --

10:05 4 JUROR HEBERT: Yes, sir. It was a mock  
10:05 5 trial.

10:05 6 THE COURT: -- mock trial. Thank you.

10:05 7 Anyone else participated in anything like  
10:05 8 that?

10:05 9 Okay. Good. You know, let me just ask  
10:05 10 you two very general questions, but they're really my  
10:05 11 most important two questions. So I'd like you to listen  
10:05 12 very carefully and really -- this is one of those times  
10:05 13 I ask you to kind of search your insights a little bit.

10:05 14 Is there any reason that you could not  
10:05 15 follow my instructions on the law of this case? If you  
10:05 16 have any apprehensions, maybe you disagree with the law  
10:05 17 that I would give to you and tell you to follow or  
10:05 18 something, could you raise your hand on that?

10:05 19 All right. And this is another question.  
10:05 20 It's general, but I really need you to take it quite  
10:06 21 seriously.

10:06 22 Is there any reason at all that any of you  
10:06 23 could not render an unbiased verdict here? Is there any  
10:06 24 reason that you would feel you couldn't really do the  
10:06 25 job your government expects you to do in reaching a fair

10:06 1 verdict? If you could raise your hand on any  
10:06 2 apprehensions you might have about that role.

10:06 3 Thank you.

10:06 4 What I'm going to do now is I'm going to  
10:06 5 allow counsel to go through maybe some of the same  
10:06 6 areas. I want to just make sure they get a chance to  
10:06 7 get to know you a little bit as well and ask you a few  
10:06 8 questions.

10:06 9 So we'll start -- I think we'll start with  
10:06 10 you, Mr. Hill. Would you like to take a little time and  
10:07 11 talk to the ladies and gentlemen?

10:07 12 MR. HILL: Thank you for the opportunity,  
10:07 13 Your Honor.

10:07 14 Ladies and Gentlemen, thank you again for  
10:07 15 being here this morning. My name is Wesley Hill. As I  
10:07 16 told you earlier, I represent the Plaintiffs in this  
10:07 17 lawsuit.

10:07 18 Let me ask first off, I want to -- you  
10:07 19 folks are out there and I hate to stay way over here.  
10:07 20 If I step away from the podium, can you hear me okay?

10:07 21 Okay. My clients in this case, as I told  
10:07 22 you earlier, are two companies. The first company is  
10:07 23 called IP Innovation. The second is a company called  
10:07 24 Technology Licensing Corporation.

10:07 25 There's a couple people earlier that I

10:07 1 didn't introduce to you that I want to introduce to you  
10:07 2 now. The first Mr. Carl Cooper. Mr. Cooper is the  
10:07 3 General Manager of Technology Licensing Corporation.  
10:07 4 He's here as a corporate representative on behalf of the  
10:07 5 company.

10:07 6 The other person I want to introduce to  
10:07 7 you is Mr. Clayton Haynes. Mr. Haynes is a corporate  
10:08 8 representative with IP Innovation. He'll be with us  
10:08 9 here through the trial as well.

10:08 10 I wanted to give you folks a chance to  
10:08 11 meet them. They're the representatives for the  
10:08 12 Plaintiffs in this lawsuit.

10:08 13 Now, as I told you earlier, we've got  
10:08 14 other lawyers that are working on the case. We  
10:08 15 introduced to you Mr. Gasey, Mr. Gibbons, Mr. Vickrey.  
10:08 16 They're from Chicago, Illinois, and a firm up there  
10:08 17 called Niro Haller & Niro. And they were kind enough to  
10:08 18 ask me to be their local guy on the thing since they  
10:08 19 came down to Marshall, Texas, to work on this case.

10:08 20 Now, this is a significant part of the  
10:08 21 process, jury selection. This is our only opportunity  
10:08 22 to talk to you folks and you can talk back to us. We  
10:08 23 can have a discussion. The rest of the time, for those  
10:08 24 of you who get selected, it will be you listening to us,  
10:08 25 and we won't be able to listen to you at that point.

10:09 1 The only wrong answer in a jury selection  
10:09 2 is the answer you don't give. So all we're doing is  
10:09 3 trying to get to know you folks a little bit so we can  
10:09 4 represent our clients fairly when we try to make sure we  
10:09 5 get a jury in this case that's going to be fair and  
10:09 6 impartial and to fairly hear the case.

10:09 7 If I ask some questions and it's something  
10:09 8 you think pertains to you as you've already done for  
10:09 9 Judge Rader, let me know, and we'll talk about it. And  
10:09 10 I appreciate it.

10:09 11 Now, this is a patent case, and we -- my  
10:09 12 clients, IP Innovation and Technology Licensing  
10:09 13 Corporation, are the owners of three United States  
10:09 14 patents. That's them right here (indicates), three  
10:09 15 United States patents.

10:09 16 And what our companies do is we are in the  
10:09 17 business of helping inventors and small business owners,  
10:09 18 small patent owners realize value from their inventions.  
10:10 19 We provide them with the time and the investment and the  
10:10 20 expertise that small inventors may not have to make sure  
10:10 21 their property rights are respected.

10:10 22 What we do is we help patent rights owners  
10:10 23 to get paid royalties by companies that want to use  
10:10 24 their technology.

10:10 25 Let me ask a question. How many of you

10:10 1 have ever heard of either of these companies, either IP  
10:10 2 Innovation or Technology Licensing Corporation.

10:10 3 It's not likely that you would.

10:10 4 Let me ask this question: Is there  
10:10 5 anybody -- oh, I'm sorry. Yes, ma'am; is that  
10:10 6 Ms. McFarland?

10:10 7 JUROR MCFARLAND: Gayle McFarland. I've  
10:10 8 just heard of IP Innovation. I don't know really  
10:10 9 anything about them. I just have heard about them.

10:10 10 MR. HILL: You've heard the name. Nothing  
10:10 11 about that makes you lean one way or the other?

10:10 12 JUROR MCFARLAND: No, sir.

10:10 13 MR. HILL: Thank you, ma'am.

10:11 14 Now, is there anybody -- I mentioned  
10:11 15 earlier royalties. Anybody here receive oil and gas  
10:11 16 royalties?

10:11 17 We have a couple over here.

10:11 18 Mr. Orr, you're in the oil and gas  
10:11 19 business, aren't you?

10:11 20 JUROR ORR: Yes, I am.

10:11 21 MR. HILL: And you're familiar with oil  
10:11 22 and gas royalties?

10:11 23 JUROR ORR: Yes, I am.

10:11 24 MR. HILL: So if an oil company pays you  
10:11 25 royalties, they're paying you that royalty because



10:11 1 they're using your property, right?

10:11 2 JUROR ORR: Yes.

10:11 3 MR. HILL: They're using your mineral  
10:11 4 rights --

10:11 5 JUROR ORR: Right.

10:11 6 MR. HILL: -- to produce oil and gas, and  
10:11 7 they pay you a royalty based off it?

10:11 8 JUROR ORR: Right.

10:11 9 MR. HILL: Well, that's not unlike our  
10:11 10 situation. We own inventions, patents, and people who  
10:11 11 want to use our property pay us royalties to use them.  
10:11 12 So it's a similar circumstance.

10:11 13 Anybody else familiar with oil and gas  
10:11 14 royalties?

10:11 15 That's where it comes up. We have a  
10:11 16 couple hands here.

10:11 17 You're just generally familiar with how  
10:11 18 that works?

10:11 19 JUROR NASH: My husband inherited  
10:11 20 generation generation from a grandmother to his mother's  
10:12 21 portion of oil and gas rights up in Oklahoma but very  
10:12 22 small. So the only thing we really know is an  
10:12 23 occasional very small check.

10:12 24 MR. HILL: Okay. Ms. Nash, you understand  
10:12 25 how that concept works then, receiving a royalty from

10:12 1 somebody using the property?

10:12 2 JUROR NASH: Yes.

10:12 3 MR. HILL: Everybody else is familiar with  
10:12 4 royalties and understands that concept?

10:12 5 Now, let me ask you about the Defendants  
10:12 6 in this lawsuit. The Defendants in this lawsuit, who we  
10:12 7 say are infringing our patents, are two companies. The  
10:12 8 first one is called Red Hat.

10:12 9 Anybody in here heard of Red Hat?

10:12 10 The second is Novell.

10:12 11 Anybody heard of Novell?

10:12 12 We've got a couple hands here.

10:12 13 Let me just ask, is there anybody that  
10:12 14 knows anything more than Novell is a software company?

10:12 15 Had a lot of dealings with Novell.

10:12 16 Let's start right here. Mr. Walker; is  
10:13 17 that right?

10:13 18 JUROR WALKER: It's been a few years and  
10:13 19 my memory is not that good. I might be getting it mixed  
10:13 20 up with another company. But I believe it was a  
10:13 21 Canadian company that had office suite-type software.  
10:13 22 WordPerfect, I think, was one of them, I believe.

10:13 23 MR. HILL: I think you're talking about  
10:13 24 Corel.

10:13 25 JUROR WALKER: Corel. I'm sorry. See, it

10:13 1 rhymes. I told you my memory is not that good.

10:13 2 MR. HILL: While I've got you there,  
10:13 3 Mr. Walker, let me ask you something. You mentioned  
10:13 4 that you're a student right now, a graduate student.

10:13 5 JUROR WALKER: Yes, sir.

10:13 6 MR. HILL: What are you studying?

10:13 7 JUROR WALKER: Military history.

10:13 8 MR. HILL: Okay. What school?

10:13 9 JUROR WALKER: It's Norwood University in  
10:13 10 Northfield, Vermont.

10:13 11 MR. HILL: Are you a full-time student.

10:13 12 JUROR WALKER: Yes.

10:13 13 MR. HILL: Thank you, sir.

10:13 14 THE COURT: Why did Napoleon win the  
10:13 15 battle of Austerlitz?

10:13 16 Because he abandoned the high ground. You  
10:13 17 can use that for --

10:14 18 JUROR WALKER: That was three weeks ago,  
10:14 19 sir.

10:14 20 THE COURT: He applied all expectations.  
10:14 21 Excuse me. Go ahead.

10:14 22 MR. HILL: Now -- yes, ma'am, right over  
10:14 23 here. And that is Ms. -- let's see if I can get it. Is  
10:14 24 that Ms. Whatley?

10:14 25 I'm sorry. 19, is that your number?

10:14 1 That is Ms. Corley. I'm sorry.

10:14 2 JUROR CORLEY: I currently work for a  
10:14 3 company that uses Novell.

10:14 4 MR. HILL: You use their software. You're  
10:14 5 familiar that they make operating systems and that sort  
10:14 6 of thing?

10:14 7 JUROR CORLEY: Uh-huh. Kind of/sort of.  
10:14 8 I just use the system. I log into it and process off it  
10:14 9 every day.

10:14 10 MR. HILL: Is there anything about the use  
10:14 11 of their software that makes you feel you couldn't be  
10:14 12 fair to one side or the other?

10:14 13 JUROR CORLEY: No.

10:14 14 MR. HILL: Anybody else? Anybody know  
10:14 15 something about Red Hat or Novell that makes you think  
10:14 16 you couldn't be fair to the parties in this case?

10:14 17 Thank you.

10:14 18 Now, earlier you saw the lawyers for the  
10:14 19 Defendants and you also saw the lawyers for the  
10:15 20 Plaintiffs, and you had a chance to look at us a little  
10:15 21 longer now.

10:15 22 I want to ask you again, does anybody  
10:15 23 recognize any of the lawyers?

10:15 24 No?

10:15 25 Okay. Well, as I mentioned when we got

10:15 1 started, this is a case about patent infringement, and  
10:15 2 we are the owners of three U.S. patents that were issued  
10:15 3 in 1991, '95, and '96. Those are the patents I showed  
10:15 4 you earlier.

10:15 5 And in broad form, our patents relate to a  
10:15 6 technology called computer workspace switching or  
10:15 7 computer workspace switcher. Let me tell you, that's no  
10:15 8 more complicated than it sounds. You're looking at a  
10:15 9 computer screen and you've got Windows and things open  
10:15 10 on that computer screen and you want to do something  
10:15 11 else, but you don't want to close everything down.

10:15 12 There's a switch and you pick it and it  
10:15 13 gives you a new, fresh desktop. Your other one is still  
10:15 14 there, but you have a new one pop up. You can use it.  
10:15 15 When you get ready, you can push it back, or you can  
10:16 16 create a third one and switch to it. That's, in a  
10:16 17 nutshell, what these patents relate to.

10:16 18 We say that the Defendants in this lawsuit  
10:16 19 are infringing our patents, because they sell operating  
10:16 20 systems that provide that same functionality. They're  
10:16 21 using our property and they're not paying us for it.  
10:16 22 And that brings me to talking about questions about  
10:16 23 patents and patent rights or rights that a patent gives  
10:16 24 you.

10:16 25 Is there anyone who, either you or a

10:16 1 family member, a close family member, have ever invented  
10:16 2 anything and sought a patent on it? Anybody?

10:16 3 Now, Ms. -- right back here, Ms. Bolt? I  
10:16 4 noticed earlier you said you went to this seminar a  
10:16 5 couple days.

10:16 6 Were you look at getting a patent?

10:16 7 JUROR BOLT: Right.

10:16 8 MR. HILL: Was it an invention of your  
10:17 9 own?

10:17 10 JUROR BOLT: Yes.

10:17 11 MR. HILL: Can you tell me -- I don't want  
10:17 12 to get into your business, but can you tell me anything  
10:17 13 about it?

10:17 14 JUROR BOLT: It's still pending. I have  
10:17 15 not done anything further on it. It has to do with --  
10:17 16 it's kind of funny. It has to do with our raising seat  
10:17 17 lids on the toilet.

10:17 18 MR. HILL: Okay. Well, that's something  
10:17 19 that's got to be done.

10:17 20 JUROR BOLT: And it's putting it back  
10:17 21 down. That was the big issue.

10:17 22 MR. HILL: That's important, too. Do you  
10:17 23 have a patent pending?

10:17 24 JUROR BOLT: No. I'm still in the process  
10:17 25 of working things out.

10:17 1 MR. HILL: Is there something that would  
10:17 2 make you a better or worse juror in this case?

10:17 3 JUROR BOLT: Probably neither one.

10:17 4 MR. HILL: Neither one?

10:17 5 Okay. Anybody else?

10:17 6 Right up here on the front row.

10:17 7 JUROR WOLFE: It's insignificant.

10:17 8 MR. HILL: Listen, there's nothing  
10:17 9 insignificant here today.

10:17 10 Ms. Wolfe?

10:17 11 JUROR WOLFE: Yes, Jan Wolfe. My son is  
10:18 12 an engineer. Truthfully, I really don't know that much  
10:18 13 about it, but I know he has invented something. He  
10:18 14 designs blowout preventers for Gulf rigs.

10:18 15 MR. HILL: That's important right now.  
10:18 16 Have you seen --

10:18 17 JUROR WOLFE: It's scarily important. But  
10:18 18 I'm not even sure what the product does. It's some kind  
10:18 19 of device or valve or something on those blowout  
10:18 20 preventers. And it has been applied for. That's all  
10:18 21 that I know.

10:18 22 MR. HILL: Okay. Thank you.

10:18 23 I saw on the news this morning where they  
10:18 24 were trying to get a robot submarine to pull the blowout  
10:18 25 preventer on the well in the Gulf that's leaking.

10:18 1 Now, patents are issued by the United  
10:18 2 States Patent & Trademark Office of the United States  
10:18 3 government. And they're authorized by our Constitution.  
10:18 4 Patent protection is embodied in our United States  
10:18 5 Constitution.

10:18 6 Is there anybody that objects to the  
10:18 7 government being the one who decides who owns important  
10:19 8 intellectual property?

10:19 9 That's a 3-dollar word. Let me talk about  
10:19 10 that.

10:19 11 Intellectual property is what patent  
10:19 12 lawyers use to talk about patents or trademarks or  
10:19 13 copyrights or those kind of things.

10:19 14 Is there anybody that has a problem with  
10:19 15 the fact that it's the government ultimately, the Patent  
10:19 16 Office, that decides who's the inventor and who owns  
10:19 17 that? Does that bother anybody?

10:19 18 Now, it's often said a patent is like a  
10:19 19 deed to land. And what it does is for a period of time,  
10:19 20 it gives the person a right to use that invention.

10:19 21 Is there anybody who has a problem with  
10:19 22 the idea that a patent owner is the person with the  
10:19 23 right to give permission for whether somebody else can  
10:19 24 use their invention?

10:19 25 Does everybody agree with me they think



10:19 1 that's the way it ought to be?

10:19 2 Is there anybody that feels it's wrong to  
10:19 3 require a company to pay for somebody else's technology  
10:20 4 if they want to use it? If you want to use the property  
10:20 5 of somebody else, is it wrong to require them to pay for  
10:20 6 it?

10:20 7 Now, as the Judge told you earlier, when a  
10:20 8 company like our companies -- we'll call them IPI and  
10:20 9 TLC for short. You'll hear us say that throughout the  
10:20 10 trial.

10:20 11 When companies like IPI or TLC believe  
10:20 12 somebody is infringing their patents, there's no patent  
10:20 13 police out there. There's nobody that enforces this.  
10:20 14 The remedy is you have to come to court and file a  
10:20 15 lawsuit for patent infringement. And that's what we've  
10:20 16 done in this case.

10:20 17 Now, the reason I bring that up is a lot  
10:20 18 of people are of the opinion -- and I'm not going to say  
10:20 19 it's the wrong opinion -- of the opinion there's too  
10:20 20 many lawsuits in this world. But patent lawsuits are  
10:20 21 something you have to file if you want to check facts.

10:20 22 Is there anybody that thinks patent  
10:21 23 lawsuits aren't the kind of lawsuits you want to see at  
10:21 24 the courthouse?

10:21 25 Do you think that these are abusive-type

10:21 1 lawsuits, or you have a problem with people coming to  
10:21 2 court and filing a lawsuit to enforce their intellectual  
10:21 3 property rights?

10:21 4 Does that bother anybody?

10:21 5 Mr. Walker, does that give you any  
10:21 6 concern?

10:21 7 JUROR WALKER: Not particularly.

8 MR. HILL: Anybody else? Is there anybody  
10:21 9 that's different than Mr. Walker that it does give you  
10:21 10 some concern.

10:21 11 Mr. Stabeno, I may have misread you back  
10:21 12 there. Is there anything crossing your mind about that?

10:21 13 JUROR STABENO: (Shakes head.)

10:21 14 MR. HILL: No? Okay.

10:21 15 Now, it's important to ask in these cases,  
10:21 16 because some people feel this way. Some people have  
10:21 17 moral or religious convictions that they think prevent  
10:22 18 them from sitting in judgment of somebody else's  
10:22 19 situation.

10:22 20 There's nothing wrong with that, but if  
10:22 21 you feel that way and think that will be a problem in  
10:22 22 your jury service, just let us know that.

10:22 23 Anybody have those kind of feelings, moral  
10:22 24 or religious reasons you think jury service isn't for  
10:22 25 you?

10:22 1 Well, let me talk to you a little bit  
10:22 2 about something called burdens of proof. And those of  
10:22 3 you who have been on a jury before will know what  
10:22 4 burdens of proof are all about.

10:22 5 But we're the Plaintiffs in this case, and  
10:22 6 we have to prove that the Defendants who we've sued are  
10:22 7 infringing our patents. And we're going to do that.  
10:22 8 And we have to prove that by what's called a  
10:22 9 preponderance of the evidence.

10:22 10 Preponderance of the evidence means more  
10:22 11 likely true than not true. That means if we look at the  
10:22 12 scales of justice up here, that means enough to tip the  
10:22 13 scale, just in one direction or another.

10:22 14 We use a football analogy, getting it  
10:23 15 across the 50-yard line. That's the preponderance of  
10:23 16 evidence standard. That's the standard that applies in  
10:23 17 most cases and applies to us in proving our case of  
10:23 18 infringement.

10:23 19 Let me ask, is there anybody who thinks  
10:23 20 that seems like too light a burden?

10:23 21 We're here suing for money, and we're  
10:23 22 going to be asking for several million dollars at the  
10:23 23 end of the day, because these companies have made tens  
10:23 24 of millions of dollars off the backs of our technology.

10:23 25 Is there anybody who thinks that if you're

10:23 1 going to sue for millions of dollars, you ought to have  
10:23 2 a higher burden than that?

10:23 3 If the Judge tells you that's the law,  
10:23 4 everybody agree they can apply that and follow it?

10:23 5 Now, Red Hat and Novell, they're not going  
10:23 6 to admit their infringement. They're going to come up  
10:23 7 in here and they're going to put up defenses. One of  
10:23 8 the defenses they're going to put up is they're going to  
10:24 9 tell you our patents are no good, that they're invalid.

10:24 10 And to prove the defense of invalidity,  
10:24 11 they have to meet a higher burden of proof. It's a  
10:24 12 burden called clear and convincing evidence. And that  
10:24 13 means something highly probable. It means if we look at  
10:24 14 these scales of justice again, they don't just have to  
10:24 15 tip ever so slightly, like the preponderance of the  
10:24 16 evidence standard. They would have to tip  
10:24 17 significantly. Highly probable.

10:24 18 And the reason for that is, because a  
10:24 19 patent, once it's issued by the Patent Office, is  
10:24 20 presumed to be valid. You presume the Patent Office did  
10:24 21 their job right, and that's a valid patent.

10:24 22 Is there anybody that thinks that's  
10:24 23 unfair, that they have a higher burden of proof to prove  
10:24 24 their defenses of invalidity than we have to prove our  
10:24 25 case of infringement?

10:24 1 Does that notion strike anybody as just  
10:24 2 not the way it should be?

10:25 3 Mr. Orr, does that bother you?

10:25 4 JUROR ORR: I know nothing about computers  
10:25 5 and software.

10:25 6 MR. HILL: Okay. But just the idea that  
10:25 7 they would have to go further to invalidate our patent  
10:25 8 than we have to go to prove that they're infringing on  
10:25 9 them, does that bother you?

10:25 10 JUROR ORR: No.

10:25 11 MR. HILL: Okay. If the Judge tells you  
10:25 12 that's the law, you can accept it and follow it?

10:25 13 JUROR ORR: Yes.

10:25 14 MR. HILL: Everybody agree with Mr. Orr?  
10:25 15 Anybody disagree with him?

10:25 16 Now, some of you mentioned prior jury  
10:25 17 service. One place you may have heard of the clear and  
10:25 18 convincing evidence standard is in family law cases. If  
10:25 19 the State is going to terminate somebody's parental  
10:25 20 rights, they have to prove abuse or neglect by a clear  
10:25 21 and convincing evidence. Highly probable evidence.

10:25 22 Is there anybody that's ever been on a  
10:25 23 jury before where you had to apply the heightened clear  
10:25 24 and convincing evidence burden? Anybody?

10:25 25 Yes, ma'am, I thought I would hear from

10:25 1 you. Ms. -- let me get your name right -- Ms. Miller?

10:25 2 JUROR MILLER: Yes, sir.

10:26 3 MR. HILL: Now, you've served on a patent  
10:26 4 jury before?

10:26 5 JUROR MILLER: Yes, sir.

10:26 6 MR. HILL: And that was a case where  
10:26 7 validity was at issue?

10:26 8 JUROR MILLER: Yes, sir.

10:26 9 MR. HILL: And you said that the jury in  
10:26 10 your case found that the patents were, in fact, invalid;  
10:26 11 is that right?

10:26 12 JUROR MILLER: Yes, sir.

10:26 13 MR. HILL: Let me ask you about that. Did  
10:26 14 the Judge instruct you on the clear and convincing  
10:26 15 evidence burden?

10:26 16 JUROR MILLER: Yes, sir.

10:26 17 MR. HILL: Did you understand that that  
10:26 18 was pretty serious evidence to get there?

10:26 19 JUROR MILLER: Yes, sir.

10:26 20 MR. HILL: And in that case, you held the  
10:26 21 Defendant to their burden, didn't you?

10:26 22 JUROR MILLER: Yes, sir. It was based  
10:26 23 on -- like there was already all that knowledge in the  
10:26 24 field years before their patent.

10:26 25 MR. HILL: Somebody else had come up with

10:26 1 it first?

10:26 2 JUROR MILLER: It had been in use a period  
10:26 3 of time.

10:26 4 MR. HILL: Okay. So someone had used the  
10:26 5 invention out in the public before the patent  
10:26 6 application?

10:26 7 JUROR MILLER: Yes.

10:26 8 MR. HILL: Okay. Well, if you're a juror  
10:26 9 in this case, will you again impose that high burden and  
10:27 10 hold the Defendants to their clear and convincing  
10:27 11 standard?

10:27 12 JUROR MILLER: Yes, sir.

10:27 13 MR. HILL: Does everybody think they can  
10:27 14 do what Ms. Miller has done before and would do again  
10:27 15 and hold the Defendants to a higher standard of clear  
10:27 16 and convincing evidence, if the Judge tells you that's  
10:27 17 the law?

10:27 18 Thank you, Ms. Miller.

10:27 19 Now, folks, this is an important case to  
10:27 20 my clients, and it's important case, because they think  
10:27 21 the technology that they own or these patents they own  
10:27 22 are very valuable.

10:27 23 And once you've heard the evidence in this  
10:27 24 case -- it's a civil case. And civil cases are about  
10:27 25 money damages. We're going to ask you for money damages

10:27 1 to compensate us for the Defendants' use of our  
10:27 2 technology without having to pay for it.

10:27 3 And you're going to hear that that amount  
10:27 4 of money to compensate us for that use that they made  
10:28 5 off our patents is going to be in the millions of  
10:28 6 dollars, several million dollars.

10:28 7 Is there anybody that is uncomfortable  
10:28 8 with that, that that just bothers you; that you think,  
10:28 9 you know, there's a certain amount of money that just no  
10:28 10 lawsuit is worth, and they're asking for millions of  
10:28 11 dollars? I don't know. Anybody? Just gives you a  
10:28 12 little bit of unease?

10:28 13 Because let me tell you, it's not going to  
10:28 14 be that we're going to ask for it without presenting  
10:28 15 evidence to you.

10:28 16 Let me ask a couple people this.  
10:28 17 Ms. Wolfe, does it give you any heartburn?

10:28 18 JUROR WOLFE: No.

10:28 19 MR. HILL: If the evidence is presented  
10:28 20 that shows that burden of proof?

10:28 21 JUROR WOLFE: No, because there's so much  
10:28 22 time and several --

10:28 23 MR. HILL: You would agree with me that  
10:28 24 patents can be very valuable things?

10:28 25 Anybody disagrees with Ms. Wolfe?



10:29 1 Now, I want to ask a couple specific  
10:29 2 questions of some of you. Some things about your  
10:29 3 history that -- I know some of you completed a  
10:29 4 questionnaire for us, and I appreciate you doing that.  
10:29 5 It helps us simplify and save you time in the courtroom.

10:29 6 But I want to ask a couple of specific  
10:29 7 questions and just get a show of hands. How many of you  
10:29 8 have ever held the same job for more than 20 years?

10:29 9 Let's get a couple of hands.

10:29 10 I'll call out your numbers. We've got  
10:29 11 Mr. Orr here, No. 4, 6, 7, 15, 17, 18, 21, 24, 29, and  
10:29 12 30.

10:29 13 Okay. How many of you have ever worked at  
10:30 14 a job where it was a union-type environment?

10:30 15 My dad grew up working for  
10:30 16 Kelly-Springfield over in Tyler, the Rubber Workers  
10:30 17 Union and Steelworkers Union over there.

10:30 18 Anybody ever worked in a union job? Let's  
10:30 19 see your hands.

10:30 20 Okay. Of those who have worked in those  
10:30 21 kinds of environments, have any of you ever been  
10:30 22 somewhere where they had a union and you could join and  
10:30 23 you chose not to?

10:30 24 Anybody said -- right here, No. 25. That  
10:30 25 is Mr. Knight?

10:30 1 Mr. Knight, where was that at?

10:30 2 JUROR KNIGHT: Beeville, Texas.

10:30 3 MR. HILL: Beeville?

10:30 4 JUROR KNIGHT: Beeville and Kingsville.

10:30 5 MR. HILL: Okay. What kind of company was  
10:30 6 it?

10:30 7 JUROR KNIGHT: We were contractors for the  
10:30 8 government.

10:30 9 MR. HILL: Okay. Anybody else in similar  
10:31 10 circumstances as Mr. Knight at some point where you were  
10:31 11 in a job and the union was an option, but you chose not  
10:31 12 to?

10:31 13 Ms. Bolt, yes, ma'am?

10:31 14 JUROR BOLT: Yes. I worked as the payroll  
10:31 15 administrator in the Accounting Department for a company  
10:31 16 here in Marshall, and we also had a location in  
10:31 17 Oklahoma, and the employees were unionized.

10:31 18 MR. HILL: And you were not?

10:31 19 JUROR BOLT: I was not.

10:31 20 MR. HILL: All right. Is there anybody  
10:31 21 here that works for a government job, government entity?  
10:31 22 It can be county, city, state, federal. Work in a  
10:31 23 government job?

10:31 24 Yes, sir, right over here. Mr. Power?

25 JUROR POWER: Yes, sir.

1 MR. HILL: Mr. Power, where did you work?  
2 JUROR POWER: Corrections.  
3 MR. HILL: Over at TDC?  
4 JUROR POWER: Yes, sir.  
10:31 5 MR. HILL: TDCJ, isn't it?  
10:31 6 JUROR POWER: TDCJ-ID, Institutional  
10:31 7 Division.  
10:31 8 MR. HILL: What unit?  
10:32 9 JUROR POWER: I was at Telford and New  
10:32 10 Boston for five years, and then got transferred to  
10:32 11 Winnsboro, which is a SAFPF rehab, state rehab.  
10:32 12 MR. HILL: Anybody else?  
10:32 13 Yes, sir, right here next to you, yes,  
10:32 14 sir?  
10:32 15 JUROR WHATLEY: I just work for the public  
10:32 16 school system.  
10:32 17 MR. HILL: What school district was that?  
10:32 18 JUROR WHATLEY: Hughes Springs.  
10:32 19 MR. HILL: Hughes Springs. And are you  
10:32 20 the band director?  
10:32 21 JUROR WHATLEY: Yes, I am.  
10:32 22 MR. HILL: All right. Who else?  
10:32 23 Mr. Walker has got his hand up here, right  
10:32 24 on the front row as well.  
10:32 25 JUROR WALKER: I just recently -- well,

10:32 1 within the last year retired from the Army Reserves  
10:32 2 after 32 years. But also in the past, I worked for the  
10:32 3 State of Louisiana and the State of Texas, also.

10:32 4 MR. HILL: What was your position in the  
10:32 5 Army?

10:32 6 JUROR WALKER: Chaplain.

10:32 7 MR. HILL: Very good.

10:32 8 All right. Who else? We had a couple  
10:32 9 other hands.

10:33 10 Ms. Wolfe?

10:33 11 JUROR WOLFE: I work for the school  
10:33 12 district.

10:33 13 MR. HILL: The school district.

10:33 14 Okay. Right there behind you, Mr. Roach?

10:33 15 JUROR ROACH: Kenneth Roach. I work for  
10:33 16 the City of Marshall.

10:33 17 MR. HILL: City of Marshall. What do you  
10:33 18 do for the City?

10:33 19 JUROR ROACH: Operator 2.

10:33 20 MR. HILL: Okay. Thank you.

10:33 21 Right over here we've got a couple of  
10:33 22 others, whichever you want to do.

10:33 23 JUROR BARBER: I'm Amy Barber, and I work  
10:33 24 for Atlanta Independent School District.

10:33 25 MR. HILL: What do you do for them?

10:33 1 JUROR BARBER: I'm a teacher.

10:33 2 MR. HILL: What grade?

10:33 3 JUROR BARBER: Seventh and eighth.

10:33 4 MR. HILL: Specific subject?

10:33 5 JUROR BARBER: It's called AVID; it's an  
10:33 6 elective course.

10:33 7 MR. HILL: Okay.

10:33 8 THE COURT: Do you get hazard pay for  
10:33 9 that?

10:33 10 [Laughter.]

10:33 11 JUROR STEPHENSON: I'm Mr. Stephenson. I  
10:33 12 work for Harmony Independent School District. I'm a  
10:33 13 retired electrician, but decided to go to work for a  
10:33 14 school district to have something to do. But I'm a  
10:33 15 teacher's aide in the sixth, seventh, and eighth grade.

10:33 16 MR. HILL: Thank you, sir.

10:34 17 Let me ask you one quick question. Where  
10:34 18 did you retire from?

10:34 19 JUROR STEPHENSON: TU Electric.

10:34 20 MR. HILL: What did you do?

10:34 21 JUROR STEPHENSON: Maintenance  
10:34 22 electrician.

10:34 23 MR. HILL: All right. Right next door to  
10:34 24 Mr. Stephenson?

10:34 25 JUROR BATES: Ann Bates. I teach school

10:34 1 at Gilmer ISD. I'm the homebound teacher. I go out to  
10:34 2 all grades.

10:34 3 MR. HILL: Thank you, Ms. Bates.

10:34 4 Also, on the front row, Ms. Miller?

10:34 5 JUROR MILLER: I'm not sure if this is  
10:34 6 considered county or what, but I work for Titus County  
10:34 7 Regional Medical Center. It is a hospital, but it's  
10:34 8 Titus County.

10:34 9 MR. HILL: Now, you're a nurse,  
10:34 10 Ms. Miller; is that right?

10:34 11 JUROR MILLER: Yes.

10:34 12 MR. HILL: How long have you done that?

10:34 13 JUROR MILLER: 21 years.

10:34 14 MR. HILL: Are you in any particular  
10:34 15 specialty or department of the hospital?

10:34 16 JUROR MILLER: I work Surgical Services.  
10:34 17 Right now, I just do paperwork, preop interviews and  
10:34 18 things like that.

10:34 19 MR. HILL: Okay. Well, Ladies and  
10:35 20 Gentlemen, I have used the time that Judge Rader was  
10:35 21 kind enough to allot for me, so I'm going to sit down.

10:35 22 Before I do, I want to ask you one last  
10:35 23 question. As a lawyer representing a client, all you  
10:35 24 ever hope to do is give them a fair shake at minimum.  
10:35 25 That's what you're looking for; that's what the court

10:35 1 system is for.

10:35 2 And you can't always think of every  
10:35 3 question you ought to ask a group of people in 30  
10:35 4 minutes, and so I have to depend on you. And so the  
10:35 5 last thing I want to ask you is, if you were in my shoes  
10:35 6 and you were having to represent a client and talk to  
10:35 7 folks about jury service, is there anything about  
10:35 8 yourself that you'd want to know, if you were the person  
10:35 9 standing up here asking the questions?

10:35 10 Anything about your prior experience in  
10:35 11 life, experience with the courts, just general feelings  
10:35 12 about the world that you think we ought to know about  
10:35 13 that could impact your service on this jury? Anybody?

10:36 14 All right. I appreciate your time. I  
10:36 15 appreciate your openness with me. I know this isn't a  
10:36 16 comfortable environment, and I know I've taken up time  
10:36 17 in your life. You'd rather do other things.

10:36 18 So thank you.

10:36 19 And thank you, Judge Rader, for the  
10:36 20 opportunity.

10:36 21 THE COURT: Mr. Hill, I think we'll hear  
10:36 22 now -- Mr. Reiter, is it you we're going to hear from?

10:36 23 MR. REITER: Yes, Your Honor. Thank you.

10:36 24 THE COURT: You may proceed.

10:36 25 MR. REITER: Good morning, everybody.

10:36 1 My name, as I said, is Mark Reiter. I'm  
10:36 2 an attorney for Defendants Red Hat and Novell.

10:36 3 You've heard a little bit about them from  
10:36 4 my friend, Mr. Hill, and I want to tell you a little bit  
10:36 5 more about them, a little bit about what they do, and  
10:36 6 see if what they do maybe familiarizes yourself with  
10:36 7 those companies such that it might ring a bell and y'all  
10:36 8 might remember something from before.

10:36 9 Before I do, there's a couple of people  
10:36 10 that I want to introduce, people from my clients, from  
10:36 11 Red Hat and Novell, who are here, who are going to be  
10:36 12 spending their time, because this is an important case.  
10:36 13 This is very important to my clients. They've been  
10:37 14 accused of something that's very, very significant, and  
10:37 15 they take that seriously.

10:37 16 So for Red Hat, we have Mr. Michael  
10:37 17 Tiemann who's up on the back row. And for Novell,  
10:37 18 Markus Rex. Both Mr. Tiemann and Mr. Rex are going to  
10:37 19 talk to those of you who are selected as jurors.  
10:37 20 They're going to explain what their companies do and  
10:37 21 what the products are all about.

10:37 22 Now, one of the things that y'all have  
10:37 23 seen so far this morning is I get to go last. And I  
10:37 24 have to sit and we have to sit and we have to wait and  
10:37 25 listen to what everybody else has to say and ask



10:37 1 questions, and then we get our turn.

10:37 2 That's the way the system works. We all  
10:37 3 know that. Somebody gets to go first and somebody gets  
10:37 4 to go second. That's alright.

10:37 5 But what that requires of y'all sitting on  
10:37 6 the jury is to keep an open mind. You have to wait and  
10:38 7 listen to the whole story. You can't just make up your  
10:38 8 mind and hear what's happened and then say, well, I've  
10:38 9 heard enough and I can shut down now.

10:38 10 It's very important to us, because we are  
10:38 11 asking for a fair trial, and we do think that we don't  
10:38 12 infringe. In fact, we know we don't infringe.

10:38 13 So I want to ask all y'all, is there  
10:38 14 anybody here who is going to have a problem keeping an  
10:38 15 open mind, waiting to let us tell our side of the story  
10:38 16 before they make up their mind or make a decision?

10:38 17 Anybody, a show of hands, that's just  
10:38 18 going to have a hard time with that?

10:38 19 Now, several of you filled out a  
10:38 20 questionnaire, and one of those questions was make up my  
10:38 21 mind quick or I'm kind of a little bit slower to make up  
10:38 22 my mind. And I want to ask a couple of y'all some  
10:38 23 questions.

10:38 24 So, Mr. Orr, I think you indicated that  
10:38 25 you're a quick learner. Is there anything about what

10:38 1 you've heard or the process and the fact that you know  
10:39 2 you're a quick learner that's going to prevent you from  
10:39 3 keeping an open mind and waiting to hear all the  
10:39 4 evidence.

10:39 5 JUROR ORR: (Shakes head.)

10:39 6 MR. REITER: Ms. Ryan, you also said you  
10:39 7 were a quick learner. Anything about what you've heard  
10:39 8 today and the process and the way that things are going  
10:39 9 to go, the burdens of proof, the evidence that Mr. Hill  
10:39 10 talked about? Are you going to be able to wait before  
10:39 11 you make up your mind and listen to everything?

10:39 12 JUROR RYAN: Yes. That's a bit of an  
10:39 13 unfair question. I think it should be stated, if  
10:39 14 presented with enough information, how would you make up  
10:39 15 your mind quickly, or something. So if presented with  
10:39 16 everything, I can make up my mind quickly.

10:39 17 MR. REITER: That's a very fair point, and  
10:39 18 we'll have to put that down on the way we ask that  
10:39 19 question.

10:39 20 What we're trying to do with those  
10:39 21 questionnaires is get as much information as we can from  
10:39 22 you-all so that when we come in here, we can ask  
10:39 23 intelligent questions, like you're saying, Ms. Ryan, and  
10:40 24 learn a little bit about who you-all are so that we can  
10:40 25 explain things in a way that might be interesting to

10:40 1 you.

10:40 2 Mr. Stabeno, I think you also said you  
10:40 3 were a quick learner. Anything about the process that  
10:40 4 gives you trouble or thoughts?

10:40 5 JUROR STABENO: No.

10:40 6 MR. REITER: Now, as Mr. Hill said and as  
10:40 7 Judge Rader said, this is a patent dispute. There are  
10:40 8 three patents that are involved in this case. You heard  
10:40 9 a little bit about what the Plaintiffs do, the  
10:40 10 Technology Licensing Corp. and IPI.

10:40 11 Mr. Hill talked about how they help small  
10:40 12 inventors, small people monetize or enforce the rights  
10:40 13 associated with their patents. This case is a little  
10:40 14 bit different.

10:41 15 These patents came from a company called  
10:41 16 Xerox. Now, how many of y'all, by a show of hands, has  
10:41 17 heard of a company called Xerox?

10:41 18 That's not a small company. These patents  
10:41 19 came from Xerox, and Xerox gave these patents to the  
10:41 20 Plaintiffs. And the Plaintiffs are now, as you heard,  
10:41 21 claiming that my clients infringe.

10:41 22 Now, does the fact that the patents came  
10:41 23 from Xerox, a big company, and that these -- the  
10:41 24 Plaintiffs, IPI and TLC, are enforcing it, does that  
10:41 25 create any problems for anybody? Does that create any

10:41 1 questions?

10:41 2 Now, my clients, Red Hat and Novell, they  
10:41 3 are software companies. They make software. And,  
10:41 4 again, it's about going second, so I get to tell you a  
10:41 5 little bit more from what Mr. Hill said.

10:41 6 They make software for operating systems  
10:41 7 for computers. A lot of y'all have probably heard of  
10:42 8 Windows and you know what Windows is. And you can move  
10:42 9 your -- or control your computer and put programs on,  
10:42 10 and it does things like that.

10:42 11 Well, my clients make a similar type  
10:42 12 product, but they're not like Windows. They're not like  
10:42 13 Microsoft. They have a different type of a system.  
10:42 14 Rather than having a bunch of engineers or computer  
10:42 15 programmers in their building that only work for them,  
10:42 16 they are part of a system called open source.

10:42 17 And that means they give away their  
10:42 18 software for free. They don't charge anything for their  
10:42 19 software. And the way they're able to do that is  
10:42 20 because people all over the world contribute to the  
10:42 21 software for free.

10:42 22 Now, have any of y'all heard of  
10:42 23 open-source software? Anybody familiar with that?

10:42 24 Colonel Walker, what do you know about  
10:42 25 open source?

10:42 1 JUROR WALKER: Basically what you said,  
10:42 2 something that's available. For example, a system like  
10:43 3 Microsoft or something that, things like that you pay  
10:43 4 the licensing fee or whatever for however many computers  
10:43 5 and put it on something like probably Linux, Firefox,  
10:43 6 web browser, things like that, other things like that,  
10:43 7 download from the web at no cost.

10:43 8 MR. REITER: Do you use any of those open  
10:43 9 source-type products.

10:43 10 JUROR WALKER: Recently I've been using  
10:43 11 Firefox some.

10:43 12 MR. REITER: Do you ever use Linux?

10:43 13 JUROR WALKER: To my knowledge -- I know  
10:43 14 some companies use different things that I may not be  
10:43 15 aware of. To my knowledge, I haven't ever used Linux.

10:43 16 MR. REITER: Does Firefox work okay for  
10:43 17 you?

10:43 18 JUROR WALKER: It's okay. It does the  
10:43 19 job.

10:43 20 MR. REITER: It does the job. I  
10:43 21 understand.

10:43 22 Anybody else heard of open-source software  
10:44 23 or any open-source products?

10:44 24 Anybody heard of Linux that you heard me  
10:44 25 talking about with Colonel Walker?

10:44 1 Now, this open-source software philosophy  
10:44 2 where you give your product away for free and you have  
10:44 3 people all over the world contributing to it for free,  
10:44 4 it's kind of a business philosophy. There are people  
10:44 5 that are really very attuned to that and feel that it's  
10:44 6 a very important way of doing business, because it  
10:44 7 allows for a better product and a quicker set of  
10:44 8 products.

10:44 9 You don't have just one company focusing  
10:44 10 on one thing. You have people all over the place  
10:44 11 focusing on many things.

10:44 12 Now, as I said, that's a business  
10:44 13 philosophy. Does anybody here have any problem with  
10:44 14 that type of philosophy, allowing people from all over  
10:44 15 the world to work on your product, do it for free, and  
10:45 16 then give it away for free?

10:45 17 Anybody, by a show of hands, have a  
10:45 18 problem with that philosophy?

10:45 19 Anybody have any kind of experience with a  
10:45 20 similar business model where you have kind of a group  
10:45 21 effort, a collective effort, and the product belongs to  
10:45 22 the group? Anybody have a similar type experience like  
10:45 23 that, a project from college, a project in high school?

10:45 24 Now -- oh, Colonel Walker?

10:45 25 JUROR WALKER: A couple years ago, I was

10:45 1 at Fort Stewart, Georgia, and we built a new chapel, the  
10:45 2 largest chapel in the Army. And we had all sorts of  
10:45 3 scheduling issues.

10:45 4 So my chaplain and assistant and I worked  
10:45 5 with IT folks to develop some scheduling software, and  
10:45 6 our hope was that our computer gurus at Fort Stewart  
10:45 7 would -- when we had all the bugs worked out, would  
10:45 8 share that with other installations.

10:46 9 For example, Fort Bliss right now is in  
10:46 10 the process of building a similar chapel. They're going  
10:46 11 to have the headaches we had. But the way we looked at  
10:46 12 it, it's not exactly the open source in a sense that we  
10:46 13 looked at it as we were developing that at Fort Stewart,  
10:46 14 and it belonged to the Army, and we wanted to share that  
10:46 15 with as many Army installations as possible.

10:46 16 MR. REITER: Did that work out well?

10:46 17 JUROR WALKER: Well, I left about a year  
10:46 18 ago, and my NCO is now a chaplain himself, and I really  
10:46 19 don't -- I mean, it was working well. I don't know how  
10:46 20 much of it we've been able to share with other  
10:46 21 installations. It was working great for us.

10:46 22 MR. REITER: I'm sorry, Colonel Walker.  
10:46 23 Did you help do the programming on that? Were you part  
10:46 24 of the programming effort?

10:46 25 JUROR WALKER: I had input. I didn't do

10:46 1 any of the code or anything, but we worked with our  
10:46 2 coders who took our input. We told them what we wanted,  
10:46 3 what we needed, and to be able to schedule. And I had  
10:46 4 control over the data that was input, but someone else  
10:47 5 was doing all the code.

10:47 6 MR. REITER: Thank you.

10:47 7 Anybody else have a similar experience?

10:47 8 Now, a number of y'all talked about some  
10:47 9 of the computer classes you took and some old languages.  
10:47 10 I'm going to get to that in just a second, but these  
10:47 11 three patents that came out of Xerox, they were filed  
10:47 12 back in 1987 and came out of work in the '80s. The  
10:47 13 first patent issued in the 1991. And it deals with  
10:47 14 technology.

10:47 15 Now, is that going to be a problem for  
10:47 16 anybody that we're talking about technology that came  
10:47 17 from the '80s, but is being applied to a product that's  
10:47 18 around today? Is that an issue for anybody?

10:47 19 Now, as I said, some of y'all talked about  
10:47 20 taking computer classes.

10:47 21 I think, Ms. Ryan, you said you took a  
10:47 22 computer class. Do you remember what language?

10:48 23 JUROR RYAN: Paschal.

10:48 24 MR. REITER: Paschal? I took a Paschal  
10:48 25 class a while back.



10:48 1 Let's see. No. 16, Mr. Stephenson, you  
10:48 2 took some computer classes?

10:48 3 JUROR STEPHENSON: Yes, sir. When I was  
10:48 4 working for TU Electric, and it was just -- it was  
10:48 5 computer logic-type programs that we use for -- to  
10:48 6 replace our relay logic that we had. But this is what  
10:48 7 they call ladder logic and a controlling-type system for  
10:48 8 the making of electricity.

10:48 9 MR. REITER: I'm familiar with ladder  
10:48 10 logic. I programmed some of that myself.

10:48 11 JUROR STEPHENSON: It's pretty good stuff.

10:48 12 MR. REITER: It was. It takes the  
10:48 13 hardwire stuff and puts it into the computer.

10:48 14 JUROR STEPHENSON: Yes, sir.

10:49 15 MR. REITER: Anybody else have experience  
10:49 16 with computer programming?

10:49 17 Now, on the other end, is there anybody  
10:49 18 that is just not real happy with computers; they don't  
10:49 19 like to deal with them; they don't want to mess with  
10:49 20 them?

10:49 21 Mr. Orr, you don't like computers?

10:49 22 JUROR ORR: I don't like computers at all.  
10:49 23 I refuse to even try to attempt to turn one on. Years  
10:49 24 ago when my wife got her first computer, in our  
10:49 25 business, we had to have one. And some kind of program,

10:49 1 you know, but I didn't know anything about it.

10:49 2 Well, one night I decided I was going to  
10:49 3 learn a little bit. So I turned the computer on about  
10:49 4 1:00 o'clock in the evening; I couldn't sleep. And I  
10:49 5 messed it all up. And it was back during the old DOS  
10:50 6 programs, I think is what she told me. I promised her I  
10:50 7 would never fool with her computers again. And I  
10:50 8 absolutely hate computers.

10:50 9 MR. REITER: And you kept your promise?

10:50 10 JUROR ORR: I still keep my promise.

10:50 11 MR. REITER: Is there anything about that  
10:50 12 you don't like computers a whole, whole lot that will  
10:50 13 prevent you from being fair in this case or keep you  
10:50 14 from listening to the evidence?

10:50 15 JUROR ORR: I know computers are a very  
10:50 16 necessary part of our society, and I know that we  
10:50 17 have -- I mean, we use them in our business. I don't,  
10:50 18 but they do. So I don't think it would affect my  
10:50 19 judgment.

10:50 20 MR. REITER: I think there were a few  
10:50 21 other people.

10:50 22 Ms. Robertson?

10:50 23 JUROR ROBERTSON: I just feel  
10:50 24 uncomfortable with them. I don't have a lot of  
10:50 25 knowledge. Both my daughters are very into them. One

10:50 1 is Assistant County Auditor, so she is with computers.

10:51 2 And the other one is a nurse at the jail.

10:51 3 And so I just feel inept to mess with  
10:51 4 them. But I like to send e-mails. I do use it for  
10:51 5 e-mails and a little bit of research on subjects every  
10:51 6 once in a while.

10:51 7 MR. REITER: On the internet?

10:51 8 JUROR ROBERTSON: Yes. I just don't enjoy  
10:51 9 it.

10:51 10 MR. REITER: I understand that. The fact  
10:51 11 that you don't really enjoy computers, is that going to  
10:51 12 be a problem for you?

10:51 13 JUROR ROBERTSON: No.

10:51 14 MR. REITER: Anybody else who would just  
10:51 15 feel so uncomfortable with computers that you might not  
10:51 16 just feel comfortable listening to a case about  
10:51 17 computers and computer software?

10:51 18 In the back, Ms. Lightfoot, is it?

10:51 19 JUROR LIGHTFOOT: Yes. I'm a retired  
10:51 20 middle school secretary from Queen City ISD, and we  
10:51 21 started that DOS program years ago, and I didn't have a  
10:51 22 choice. I had to learn that for my job. And I did it  
10:51 23 and did it well, but I just learned to click on an icon.

10:52 24 And my technology person had to do  
10:52 25 everything else for me. I've been out ten years now,

10:52 1 and I very seldom touch a computer. It's nothing I want  
10:52 2 to do.

10:52 3 MR. REITER: I understand. There's  
10:52 4 nothing about your dislike of computers that will affect  
10:52 5 you?

10:52 6 JUROR LIGHTFOOT: (Shakes head.)

10:52 7 MR. REITER: Now, as I said -- switching  
10:52 8 subjects a little bit -- we do not -- we believe, and I  
10:52 9 think we'll be able to show that we don't infringe these  
10:52 10 patents. We think that the Plaintiffs are taking the  
10:52 11 words in the patent, and they're reading them a little  
10:52 12 bit differently than they were meant to be read and  
10:52 13 really what they say.

10:52 14 You heard Mr. Hill talk about the  
10:52 15 technology very generally; that there are workspaces and  
10:52 16 the patents talk about being able to switch from one  
10:52 17 workspace to another workspace.

10:52 18 And we're going to have experts and we're  
10:53 19 going to have witnesses explain that our system is  
10:53 20 different. And we've already talked about all of y'all  
10:53 21 are going to keep an open mind on that.

10:53 22 But having heard and we were talking about  
10:53 23 computers, having heard about workspaces and switching  
10:53 24 back and forth in the patents, does that give anybody  
10:53 25 any pause or any concern?

10:53 1 Now, a few of y'all in the questionnaires  
10:53 2 answered some questions about you thought people had  
10:53 3 taken your idea or may have taken your idea in the past.  
10:53 4 If it's something you don't want to talk in the open  
10:53 5 group, we can talk with Judge Rader. We do want to  
10:53 6 follow up on that a little bit.

10:53 7 Ms. Bates, I think you indicated that you  
10:53 8 thought somebody might have taken your idea in the past.  
10:53 9 Is that something you can talk about?

10:54 10 JUROR BATES: Not me.

10:54 11 MR. REITER: Ms. Bates is over there. Did  
10:54 12 you answer that you thought that somebody may have taken  
10:54 13 your idea in the past on the questionnaire?

10:54 14 JUROR BATES: No.

10:54 15 MR. REITER: Well, I apologize for that.

10:54 16 Mr. Knight, can you answer that? Did I  
10:54 17 get that right this time?

10:54 18 JUROR KNIGHT: Yes. We did come up with  
10:54 19 some solutions several years ago that our company  
10:54 20 actually took away from us and used. But it doesn't  
10:54 21 affect the way I would judge anything.

10:54 22 MR. REITER: Do you know if there was a  
10:54 23 lawsuit filed or lawyers involved?

10:54 24 JUROR KNIGHT: No, sir.

10:54 25 MR. REITER: You just thought somebody

10:54 1 took your ideas?

10:54 2 JUROR KNIGHT: Yes.

10:54 3 MR. REITER: Colonel Walker, I think you  
10:54 4 answered that question.

10:54 5 JUROR WALKER: I wasn't thinking anything  
10:54 6 specific, just in general, you know, people exchange  
10:54 7 ideas. Sometimes we use things that we don't always  
10:55 8 give other people credit for, but nothing that would  
10:55 9 rise to this level.

10:55 10 MR. REITER: And, Ms. Wilson, there's two  
10:55 11 Ms. Wilsons in the pool. You answered that question.

10:55 12 JUROR C. WILSON: (Shakes head.)

10:55 13 MR. REITER: No?

10:55 14 JUROR M. WILSON: I think it was group  
10:55 15 discussions, and all of a sudden it will come back out  
10:55 16 as somebody else's idea. Nothing I'm going to lose  
10:55 17 sleep over.

10:55 18 MR. REITER: No lawsuits?

10:55 19 JUROR M. WILSON: No. More work for  
10:55 20 somebody else, usually.

10:55 21 MR. REITER: Now, Ms. Bolt, I think you  
10:55 22 applied for a patent. Did you apply for a patent  
10:55 23 because you thought somebody had taken your idea or you  
10:55 24 were just trying to patent it?

10:55 25 JUROR BOLT: Back in 1974 and '75, my

10:55 1 father put a patent on three different machines for the  
10:56 2 company he worked for. So, of course, it was for the  
10:56 3 company because he worked for them. And so he and I  
10:56 4 sort of tinkered with a little project, and I went to  
10:56 5 the seminar just to check it out and see if it would be  
10:56 6 something we wanted to pursue. And we just sort of put  
10:56 7 it on the back burner for a while.

10:56 8 MR. REITER: Now you're pursuing it or at  
10:56 9 least a patent is pending?

10:56 10 JUROR BOLT: No, we do not have a pending  
10:56 11 patent. We're still deliberating.

10:56 12 MR. REITER: Okay. You had said that to  
10:56 13 Mr. Hill.

10:56 14 Now, with respect to taking ideas and  
10:56 15 asking y'all if people have taken your idea, we don't  
10:56 16 have that situation here. We don't have the person or  
10:56 17 the company that owned the patents that developed the  
10:56 18 technology sitting here saying that we took the idea.

10:56 19 Plaintiffs got the patents from Xerox, as  
10:56 20 I said before. Now, is that going to be a problem for  
10:57 21 anybody, that Xerox is not here, but the Plaintiffs are  
10:57 22 here saying that we took their idea? Is that a problem  
10:57 23 for anybody?

10:57 24 Now, a number of y'all also indicated you  
10:57 25 thought corporations rely too heavily on the courts. I

10:57 1 want to go around a little bit and talk to some of  
10:57 2 y'all.

10:57 3 Now, Mr. Collins -- Mr. Collins, do you  
10:57 4 think too many lawsuits or corporations are in court too  
10:57 5 often?

10:57 6 JUROR COLLINS: Yeah, I think that a lot  
10:57 7 of people think they're going to hit the lottery by  
10:57 8 going to court and suing somebody. That's just the way  
10:57 9 I feel.

10:57 10 MR. REITER: Is that going to affect your  
10:57 11 ability as a juror, if you're called?

10:57 12 JUROR COLLINS: I wouldn't think so.

10:57 13 MR. REITER: You couldn't fairly judge  
10:58 14 what you hear?

10:58 15 JUROR COLLINS: I don't think so.

10:58 16 MR. REITER: Ms. Nash, now do you have a  
10:58 17 problem or do you feel that corporations are in court  
10:58 18 too much?

10:58 19 JUROR NASH: Not necessarily corporations.  
10:58 20 I just think there's a lot of things that people used to  
10:58 21 would talk things out and shake hands over that, things  
10:58 22 that could be handled out of court instead of taking up  
10:58 23 a lot of people's time.

10:58 24 MR. REITER: People like y'all?

10:58 25 JUROR NASH: Yeah.



10:58 1 MR. REITER: Is that going to affect your  
10:58 2 ability to listen to the evidence and judge fairly?

10:58 3 JUROR NASH: Not in this case, no.

10:58 4 MR. REITER: Ms. Snowden?

10:58 5 JUROR SNOWDEN: You hear on the news and  
10:58 6 TV about somebody going after somebody all the time, but  
10:58 7 I am not familiar with laws. And until I heard the law  
10:58 8 about the patents this morning, I wasn't familiar that  
10:59 9 with patent law, that's the only way to pursue things.  
10:59 10 I don't know details. But it seems like the courts are  
10:59 11 clogged with things all the time.

10:59 12 MR. REITER: That perception that the  
10:59 13 courts are clogged, is that going to affect your ability  
10:59 14 to fairly listen to the evidence?

10:59 15 JUROR SNOWDEN: No.

10:59 16 MR. REITER: Now, we talked a little bit  
10:59 17 about infringement, and Mr. Hill talked about validity.  
10:59 18 And we also heard from, I think, Ms. Miller who sat on a  
10:59 19 patent case before where the jury found the patent  
10:59 20 invalid. And you saw the video when y'all came in this  
10:59 21 morning about how you are part of the patent process.

10:59 22 The Patent Office is a very busy place.  
10:59 23 They look at a lot of applications and have a lot of  
10:59 24 papers to look at. Even though they have a lot of  
10:59 25 papers to look at, they don't get to see everything.

10:59 1 And the law does presume the patents to be  
10:59 2 valid. Congress kind of gives the Patent Office the  
11:00 3 benefit of the doubt. But as I said, we believe these  
11:00 4 patents are invalid, and we're going to have -- just  
11:00 5 like we have evidence that we do not infringe, we're  
11:00 6 going to have evidence that the patents are invalid,  
11:00 7 that people had this idea and had this invention first.

11:00 8 And it's based on information the Patent  
11:00 9 Office did not see or did not completely see.

11:00 10 Now, do any of y'all have a problem with  
11:00 11 judging what the Patent Office did? Because that's what  
11:00 12 y'all are going to have to do, whether they did a good  
11:00 13 job and issued a patent that really shouldn't have been  
11:00 14 issued, or if they did it right.

11:00 15 Is anybody going to have a problem with  
11:00 16 listening to the evidence and second-guessing or  
11:00 17 correcting something the Patent Office did?

11:00 18 Now, Mr. Hill also talked about the  
11:00 19 different burdens of proof, and he referred to the  
11:00 20 scales of justice over here and how a preponderance of  
11:01 21 the evidence it has to tip just slightly. But on clear  
11:01 22 and convincing, it has to tip more.

11:01 23 We have the clear and convincing  
11:01 24 evidentiary burden on the validity issue. That's  
11:01 25 something we're happy to accept. We're going to show

11:01 1 prior art, and I think that's the term you were thinking  
11:01 2 of, Ms. Miller, that by a preponderance of -- or by  
11:01 3 clear and convincing, the patents are invalid.

11:01 4 Now, that's no different than -- I lost my  
11:01 5 train of thought. That is a burden, as I said, we are  
11:01 6 able to deal with. And I just want to assure myself  
11:01 7 that you all are comfortable, that even with that clear  
11:01 8 and convincing burden, you'll be able to listen to the  
11:01 9 evidence and judge fairly.

11:01 10 Everybody okay with that?

11:01 11 Now, the last issue that will be in the  
11:02 12 case or that I'll talk about is the issue of damages.  
11:02 13 Mr. Hill talked about that a little bit, talked about  
11:02 14 royalty.

11:02 15 Mr. Orr, you got picked on a little bit  
11:02 16 this morning. In fact, I had you written down to talk  
11:02 17 about that, too. Now, can you explain a little bit how  
11:02 18 the royalties work in the oil field, in your business?

11:02 19 JUROR ORR: Well, I'm kind of on both  
11:02 20 sides, because I own mineral rights under property that  
11:02 21 I draw royalties on from other companies. Then I'm also  
11:02 22 on the side that I've leased property from people and  
11:02 23 produced wells that's on that property. So I pay  
11:02 24 royalties or my company pays royalties to the people.

11:02 25 MR. REITER: How is the price of royalties

11:02 1 decided?

11:02 2 JUROR ORR: In oil and gas, it depends on  
11:02 3 whatever oil or natural gas it's bringing at the time,  
11:02 4 and they get their percentage, whatever their percentage  
11:03 5 is.

11:03 6 MR. REITER: The market value, what others  
11:03 7 are paying for the price of oil at the time?

11:03 8 JUROR ORR: Right.

11:03 9 MR. REITER: That's somewhat similar to  
11:03 10 what happens in a patent case. Royalties are determined  
11:03 11 based on what the value of the technology is and what  
11:03 12 others have paid and looking at a number of different  
11:03 13 things.

11:03 14 And is that something, Mr. Orr, that  
11:03 15 sounds familiar to you.

11:03 16 JUROR ORR: Well, I mean, like what we do,  
11:03 17 whatever we get paid for the oil and gas, we have to pay  
11:03 18 the royalty interest owners their percentage, whatever  
11:03 19 their percentage is. And it varies. But that's what we  
11:03 20 have to pay them.

11:03 21 MR. REITER: There's some leases where  
11:03 22 there's no oil and no gas, and you don't have to pay  
11:03 23 anything, right?

11:03 24 JUROR ORR: Well, on any producing well,  
11:03 25 you have to pay somebody some royalty somewhere.

11:03 1 MR. REITER: Right, right. So if there's  
11:03 2 not a producing well --

11:03 3 JUROR ORR: If there's not a producing  
11:03 4 well, you don't have to pay anybody.

11:03 5 MR. REITER: Thank you, Mr. Orr.

11:03 6 So I see I'm drawing to the end of my  
11:03 7 time, and I did have a question -- two questions I  
11:04 8 wanted to ask all y'all.

11:04 9 And that is, any of you served as a  
11:04 10 chairperson of a committee; served on a committee and  
11:04 11 been the chairperson or been the president of a club,  
11:04 12 society.

11:04 13 Mr. Orr?

11:04 14 JUROR ORR: I was president of the school  
11:04 15 board for five years.

11:04 16 MR. REITER: When was that?

11:04 17 JUROR ORR: Up to last year. My term is  
11:04 18 up in May. I'm getting off the board. I'm retiring  
11:04 19 from that.

11:04 20 MR. REITER: Ms. McFarland, I think you  
11:04 21 put up your hand.

11:04 22 JUROR MCFARLAND: I was actually president  
11:04 23 of PTO when my oldest children were in school, and that  
11:04 24 was many moons ago. And then recently, I've been  
11:04 25 president of the Daingerfield band boosters for about

11:04 1 six years at the end of last year.

11:04 2 MR. REITER: So you're retired, too?

11:05 3 JUROR MCFARLAND: No, actually I'm not.  
11:05 4 I'm currently serving as treasurer and I will end that  
11:05 5 this August.

11:05 6 THE COURT: We found a couple of people to  
11:05 7 talk to you about your hazard pay.

11:05 8 JUROR BATES: Ann Bates. I've been  
11:05 9 president of the PTO and president of the Friends of the  
11:05 10 Library when we built the new library in Gilmer in  
11:05 11 Upshur County. And I've been president of the  
11:05 12 Bluebonnet Club, which is the Federated Women's Club  
11:05 13 group in Gilmer.

11:05 14 MR. REITER: You keep yourself busy.

11:05 15 JUROR BATES: Doesn't pay.

11:05 16 JUROR SNOWDEN: Katherine Snowden.  
11:05 17 Several years ago, probably 10 or 12 or so, I was  
11:05 18 Council Chairman at the local Women's Methodist Church  
11:05 19 and then I served as ad hoc president but secretary and  
11:05 20 concession chairman with band boosters.

11:06 21 MR. REITER: Anybody else? Colonel  
11:06 22 Walker?

11:06 23 JUROR WALKER: I'm trying to remember  
11:06 24 these things over the years. I think that's why we put  
11:06 25 our resumes on paper.

11:06 1                   Several years ago, I was -- I don't  
11:06 2 remember the time -- probably Chairman of the Pastor  
11:06 3 Association in DeSoto Baptist Association, Mansfield,  
11:06 4 Louisiana. And also for a year was moderator of that  
11:06 5 association. So those are just two examples. If I go  
11:06 6 back over 30 years, probably a lot more.

11:06 7                   MR. REITER: Yes, sir.

11:06 8                   Ms. Robertson?

11:06 9                   JUROR ROBERTSON: I was president of the  
11:06 10 Girl's Softball Association in Pittsburg about, oh, 20  
11:06 11 years ago. My girls were young.

11:06 12                  MR. REITER: When your girls were in  
11:06 13 softball.

11:06 14                  Well, I think I have run out of my time  
11:06 15 this morning, and like Mr. Hill and on behalf of my  
11:07 16 colleagues and also on behalf of the Plaintiffs, I'd  
11:07 17 like to thank all of y'all for spending the time with us  
11:07 18 this morning.

11:07 19                  I know it's not a voluntary thing, but  
11:07 20 it's a very important thing. Our country is unique. In  
11:07 21 disputes like this, the Seventh Amendment to the  
11:07 22 Constitution allows parties who have a dispute come to  
11:07 23 court and have the community to decide who's right and  
11:07 24 who's wrong and resolve that in a peaceful way. That's  
11:07 25 part of our Constitution.

11:07 1 And we thank you for your time, and we  
11:07 2 appreciate your patience.

11:07 3 THE COURT: Ladies and Gentlemen, I think  
11:07 4 we're ready to move to our next phase.

11:07 5 Is that correct, Mr. Hill, are we ready?

11:07 6 MR. HILL: I believe we are.

11:07 7 THE COURT: Mr. Reiter, do you agree?

11:07 8 MR. REITER: Yes.

11:07 9 THE COURT: This would be a good time, I  
11:07 10 think, to take a break. So I'm going to let you ladies  
11:08 11 and gentlemen take a quick break, and then we'll invite  
11:08 12 you back in 10 or 15 minutes, and we'll let you know who  
11:08 13 gets to stay with us for a week.

11:08 14 Thank you very much.

11:08 15 (Jury out.)

11:08 16 THE COURT: If you'll give me two minutes,  
11:08 17 I'll be right back.

11:08 18 (Recess.)

11:11 19 THE COURT: All right. Gentlemen, I wish  
11:11 20 I had stood up a little bit more, so I'm going to stand  
11:11 21 here for a minute.

11:11 22 Please be seated. You're all fine.

11:11 23 I'm ready to receive motions to strike for  
11:11 24 cause.

11:11 25 MR. HILL: Thank you, Your Honor.



11:11 1 THE COURT: Let me get my jurors in front  
11:11 2 of me.

11:11 3 And, Mr. Hill, I'll accept your motions  
11:11 4 first.

11:11 5 MR. HILL: Thank you, Your Honor.

11:11 6 The first, Your Honor, was Juror No. 5.  
11:11 7 That's Mr. Walker. And I've got two concerns there,  
11:11 8 Your Honor. There were some answers in his  
11:11 9 questionnaire that we believe upon further inquiry with  
11:12 10 individual voir dire will reveal --

11:12 11 THE COURT: Mr. Walker is the chaplain,  
11:12 12 right?

11:12 13 MR. HILL: That's correct, Your Honor.  
11:12 14 There's an exemption issue, I think, to be addressed  
11:12 15 with him. He said he's a full time student, and a  
11:12 16 full-time student -- I don't know that he's aware of it,  
11:12 17 whether Ms. Anderson with the clerk's office has made  
11:12 18 him aware, a full-time student can be exempt from jury  
11:12 19 service if they so elect. It doesn't sound like he's  
11:12 20 been made aware of his opportunity to elect.

11:12 21 THE COURT: I did not get the impression  
11:12 22 he was a full-time student. I got the impression that  
11:12 23 he is a -- he's taking an elective course over the  
11:12 24 Internet.

11:12 25 MR. HILL: I asked him specifically, Your

11:12 1 Honor, if he was a full-time student, and he responded,  
11:12 2 yes. We can explore it with him.

11:12 3 THE COURT: My impression is very  
11:12 4 different. This is not a full-time student in the sense  
11:12 5 of college student. This is someone who is retired and  
11:12 6 is pursuing a post-career life enhancement study rather  
11:13 7 than, I think, the purpose of the exemption that you're  
11:13 8 talking about. Would you agree with me, Mr. Hill?

11:13 9 MR. HILL: I don't know that I would  
11:13 10 agree, Your Honor. The exemption speaks to whether you  
11:13 11 are a full-time status college student. When I asked  
11:13 12 him if he was a full-time student, his answer was, yes.  
11:13 13 If he's taking graduate course study, nine hours' credit  
11:13 14 is typically considered full-time status. I don't know  
11:13 15 what his current enrollment is, but that is something we  
11:13 16 can pursue and find out whether he is simply unaware of  
11:13 17 his exemption -- we get the impression he doesn't want  
11:13 18 to be here because of that, and so we want to --

11:13 19 THE COURT: He did give that impression;  
11:13 20 that is true. Let me consult here with --

11:14 21 (Discussion off the record.)

11:14 22 THE COURT: Mr. Hill, let's go on to the  
11:14 23 next one and come back to that one, okay?

11:14 24 MR. HILL: Okay. Your Honor, he is my  
11:14 25 only, I think, realistic challenge for cause in that my

11:14 1 other one is No. 30 in the panel. I don't know  
11:14 2 mathematically that we will reach --

11:14 3 THE COURT: Let's treat it as if we might.  
11:14 4 That's --

11:14 5 MR. HILL: That's Ms. Snowden.

11:14 6 THE COURT: -- Ms. Snowden, and she's a  
11:14 7 dental hygienist with convenience issues with some of  
11:14 8 her clients, right?

11:14 9 MR. HILL: That's correct, Your Honor. My  
11:14 10 concern regarding the cause challenge is that she has  
11:14 11 some written answers in her questionnaire where she  
11:14 12 indicated that she could not judge the case fairly  
11:14 13 because of preconceived notions she has.

11:14 14 THE COURT: Give me one second.

11:14 15 MR. HILL: I've got those questionnaires  
11:14 16 handy, Your Honor.

11:14 17 THE COURT: I do too. I did not catch  
11:14 18 that one. I looked over them quickly, though. Snowden.  
11:15 19 Okay, I have it. One second. Point me to the place.

11:15 20 MR. HILL: Yes, Your Honor. It's on the  
11:15 21 last page. If you'll just give me a moment to catch up  
11:15 22 with you.

11:15 23 THE COURT: Yes, I see. Too many people  
11:15 24 file lawsuits for no good reason.

11:15 25 MR. HILL: The concern, Your Honor, is not

11:15 1 just the written statement that she has there, but it's  
11:15 2 the, yes/no indication.

11:15 3 THE COURT : I see the yes/no.

11:15 4 MR. HILL: It's indicating that she can't  
11:15 5 be fair.

11:15 6 THE COURT: I asked her, though, several  
11:15 7 times if she had any apprehensions about fairness or  
11:15 8 bias, and she didn't respond. I'm going to deny your  
11:15 9 motion.

11:15 10 MR. HILL: Your Honor, if I can ask the  
11:15 11 Court's indulgence.

11:15 12 THE COURT: You may.

11:15 13 MR. HILL: Before we deny it, can we have  
11:16 14 an opportunity to speak with her individually with the  
11:16 15 Court just to explore that sensitivity of hers a little  
11:16 16 further to see if there is some true bias in that answer  
11:16 17 we need to discuss?

11:16 18 THE COURT: Once again, I did ask her  
11:16 19 repeatedly, and she indicates here her reason. She's  
11:16 20 worried that too many lawsuits are filed, and she's open  
11:16 21 about her reason, and I don't find that's a reason that  
11:16 22 precludes her from reaching a fair and unbiased verdict.

11:16 23 MR. HILL: Thank you, Your Honor.

11:16 24 THE COURT: So she's denied.

11:16 25 We're going to return -- I can tell you

11:16 1 specifically I'm checking the rule on full-time student,  
11:16 2 and so if you -- if we can hold on that one until I have  
11:16 3 a little more information.

11:16 4 MR. HILL: We certainly can.

11:16 5 THE COURT: We'll try and get it right.

11:16 6 MR. HILL: I also have a substantive cause  
11:17 7 challenge to Mr. Walker apart from the exemption issue.

11:17 8 THE COURT: Okay. Give me that at the  
11:17 9 same time.

11:17 10 MR. HILL: Specifically with regard to his  
11:17 11 answers to the questionnaire, he also indicated that he  
11:17 12 has opinions about the patent monopoly that prevent him  
11:17 13 from being fair.

11:17 14 THE COURT: Okay. Just a second. That's  
11:17 15 Mr. Walker. Let me look at that with you. Mr. Walker.  
11:17 16 Can you point me to the place?

11:17 17 MR. HILL: Yes, Your Honor. It's on the  
11:17 18 last page again.

11:17 19 THE COURT: Last page again.

11:17 20 MR. HILL: Towards the top of the page.  
11:17 21 Let me find his questionnaire myself. He has indicated,  
11:17 22 yes, in response to that question.

11:17 23 THE COURT: Let me see. Do you think  
11:17 24 corporations rely too heavily on the courts?

11:17 25 MR. HILL: The question before that, Your

11:17 1 Honor.

11:17 2 THE COURT: Do you have any opinions about  
11:17 3 the 7 to 21-year monopoly that prevents you from being a  
11:18 4 fair juror?

11:18 5 We repeatedly asked Mr. Walker questions  
11:18 6 and inquired of him. I did not sense that he had any  
11:18 7 strong biases. My guess is that he reacted to that  
11:18 8 question very honestly and fairly as we might expect  
11:18 9 from a chaplain. And I think he's a little bit more  
11:18 10 sensitive than -- to his fairness, than this Court is.  
11:18 11 I'm denying, at least on that ground, your motion and  
11:18 12 keeping him in the pool.

11:18 13 Did you find out -- what did you find out?  
11:18 14 (Discussion off the record.)

11:18 15 THE COURT: A full-time student is someone  
11:19 16 who is taking 12 to 15 hours a semester.

11:19 17 MR. HILL: There's no distinction between  
11:19 18 graduate and undergraduate credit, Your Honor? I don't  
11:19 19 ask that to quibble, but I just -- I remember from  
11:19 20 college days there being a distinction is the only  
11:19 21 reason I ask.

11:19 22 THE COURT: I don't think there's a -- no  
11:19 23 distinction was given to me, but once again, based on my  
11:19 24 understanding and information, I'm going to deny the  
11:19 25 motion. I think he's in a little different category

11:19 1 than what that rule is trying to satisfy. I think we're  
11:19 2 trying to protect students whose careers might be  
11:19 3 jeopardized by their service if they were taken out of  
11:20 4 school for a month or two, and I don't think that  
11:20 5 applies to a retired chaplain.

11:20 6 MR. HILL: Your Honor, with regard to Mr.  
11:20 7 Walker, based on the denial of the challenge for cause,  
11:20 8 I would like to -- because I think I'm required to  
11:20 9 complete my record for appellate purposes --

11:20 10 THE COURT: Sure. Absolutely.

11:20 11 MR. HILL: We believe based on his written  
11:20 12 answers and then also based on the question of his  
11:20 13 exemption status and his preoccupation with the fact  
11:20 14 that he wants to be somewhere else completing this  
11:20 15 course study that he should be stricken for cause. And  
11:20 16 as a result, we're going to have to exercise a  
11:20 17 preemptory challenge and then select a juror later in  
11:20 18 the panel who we also may find unacceptable.

11:20 19 And because of that, Your Honor, we would  
11:20 20 request of the Court at this time an additional  
11:20 21 preemptory challenge to atone for that prejudice that's  
11:20 22 caused by the denial for cause.

11:20 23 THE COURT: Thank you, Mr. Hill. That's  
11:20 24 denied. I'm particularly impressed with Mr. Walker. I  
11:21 25 think he's -- boy, if we could get 12 chaplains, we

11:21 1 might do really well in our jury system, wouldn't we?  
11:21 2 And I think he's somebody who's going to do his best,  
11:21 3 and that's what we want.

11:21 4 MR. HILL: Thank you, Your Honor.

11:21 5 THE COURT: Thank you. Your motion,  
11:21 6 though denied, is noted for the record.

11:21 7 Now, I think, Mr. Reiter, is your chance  
11:21 8 to make any motions for cause.

11:21 9 MR. REITER: Your Honor, having listened  
11:21 10 to everybody in the thorough questioning from the Court  
11:21 11 as well as Mr. Hill, we have no motions for cause.

11:21 12 THE COURT: All right. Then we are now, I  
11:21 13 think, proceeding to our preemptory challenges. Just so  
11:21 14 we're all clear, after your preemptory challenges are  
11:21 15 through, what I will do is go with anyone left. I will  
11:21 16 start one, two, three, four, five, in the order that  
11:21 17 they have appeared on my list here and seat the  
11:22 18 remaining jurors in the box until we have 12 and excuse  
11:22 19 the rest.

11:22 20 Is that clear, Mr. Hill?

11:22 21 MR. HILL: Yes, Your Honor, it is.

11:22 22 And my only question, Your Honor, is in  
11:22 23 regard to exercising our cause challenges -- or, excuse  
11:22 24 me, our preemptory challenges. At this time or in a few  
11:22 25 moments, we wanted to note --



11:22 1 THE COURT: Yes --

11:22 2 MR. HILL: -- who was in and who was out.

11:22 3 And as we have an opportunity to --

11:22 4 THE COURT: You certainly can have --

11:22 5 shall we take -- how much time would be convenient for

11:22 6 you? This is your time to kind of think it through all

11:22 7 together.

11:22 8 MR. HILL: Your Honor, if we could get 15

11:22 9 minutes, we still could get the jury seated before noon

11:22 10 and release them for lunch with that much to break.

11:22 11 THE COURT: Does that sound okay to you,

11:22 12 Mr. --

11:22 13 MR. REITER: Yeah, sounds fine with me.

11:22 14 THE COURT: Okay. Let's go ahead and take

11:22 15 15 minutes.

11:22 16 (Recess.)

17 THE COURT: Are you ready to proceed,

11:45 18 Mr. Hill, Mr. Reiter.

11:45 19 MR. HILL: Yes. I think we had a little

11:45 20 bit of confusion about the process, but you tell us how

11:45 21 to proceed, we'll do it.

11:45 22 THE COURT: I'm the source of the

11:45 23 confusion. I'm not following the way it's usually done

11:45 24 here in the Eastern District. I have to apologize to

11:46 25 the people who know the system better than I do. We'll

11:46 1 do it the way I discussed. We'll alternate picks, but  
11:46 2 then if you would submit a written copy signed of your  
11:46 3 preemptory strikes so we could have the proper paperwork  
11:46 4 in order as well.

11:46 5 MR. HILL: We'll do it.

11:46 6 THE COURT: Let's start as we discussed  
11:46 7 earlier with strikes coming first from Mr. Hill.

11:46 8 MR. REITER: Your Honor, we did have, as  
11:46 9 we were conferring, a question. Mr. Whatley, No. 14,  
11:46 10 did not fill out a questionnaire.

11:46 11 THE COURT: Mr. Whatley, No. 14. I didn't  
11:46 12 notice that.

11:46 13 MR. REITER: It was an oversight. He did  
11:46 14 say his wife was a paralegal. The question asked for  
11:46 15 the employer. We were wondering if we could ask him or  
11:46 16 have somebody ask him that one question, what kind of  
11:46 17 paralegal and who his wife works for.

11:47 18 THE COURT: My clerk thinks we have it.

11:47 19 MR. REITER: For Mr. Whatley?

11:47 20 THE COURT: She saw someone come in late,  
11:47 21 and she's thinking it might be him. We're not sure.  
11:47 22 We'll check. No. You seem to be correct.

11:47 23 Mr. Hill?

11:47 24 MR. HILL: Your Honor, he disclosed that  
11:47 25 his wife was a paralegal on the questioning. No one

11:47 1 followed up. I hate to drag him in here individualized  
11:47 2 to ask one question, but we can if the Court wants to,  
11:47 3 obviously.

11:47 4 THE COURT: How important is this, Mr.  
11:47 5 Reiter?

11:47 6 MR. REITER: Well, Judge, it is important  
11:47 7 to us, Your Honor, and was a piece of information that I  
11:47 8 thought was on the questionnaire. As I said, I didn't  
11:48 9 realize that he did not fill one out --

11:48 10 THE COURT: That seems to be kind of a  
11:48 11 fair point that --

11:48 12 MR. REITER: I can tell the Court that we  
11:48 13 don't know who he is. Nobody on my team knows him.  
11:48 14 He's not affiliated with -- his wife at least wouldn't  
11:48 15 be affiliated with any of the firms in this case.

11:48 16 THE COURT: Well, it's probably a -- just  
11:48 17 an abundance of caution, but let's just make sure it's  
11:48 18 not a firm that would somehow be affiliated somewhere.

11:48 19 Can we invite Mr. Whatley in just for one  
11:48 20 quick question?

11:48 21 COURT ROOM DEPUTY: Sure.

11:48 22 (Juror enters courtroom.)

11:48 23 THE COURT: Explain that it's the Court's  
11:48 24 oversight or something.

11:48 25 MR. REITER: Your Honor, if you wouldn't

11:48 1 mind asking the question.

11:48 2 THE COURT: I will ask.

11:48 3 MR. REITER: Okay. Thank you.

11:49 4 THE COURT: Mr. Whatley, you can stand  
11:49 5 right there. I kind of made a mistake in not following  
11:49 6 up on one question. I wondered if we could ask you, you  
11:49 7 mentioned that your wife -- where does she work?

11:49 8 JUROR WHATLEY: She works for the Nix Law  
11:49 9 Firm in Dangerfield.

11:49 10 THE COURT: Nix Law Firm. What does she  
11:49 11 do there?

11:49 12 JUROR WHATLEY: She's a paralegal/legal  
11:49 13 assistant.

11:49 14 THE COURT: What sort of work is that? I  
11:49 15 don't mean to embarrass you. She does kind of research  
11:49 16 and things for them?

11:49 17 JUROR WHATLEY: Yes, sir, she does.

11:49 18 THE COURT: And is there any -- Mr. Hill  
11:49 19 or Mr. Reiter, do you have anything else you'd like to  
11:49 20 ask about his wife's employment?

11:49 21 MR. HILL: No, Your Honor.

11:50 22 MR. REITER: No, Your Honor.

11:50 23 THE COURT: Thank you very much. We  
11:50 24 appreciate it. That was my mistake. I should have  
11:50 25 followed up earlier and didn't.

11:50 1 (Juror exits courtroom.)

11:50 2 THE COURT: Okay. Are we set, Mr. Reiter?

11:50 3 MR. REITER: Yes, Your Honor. Thank you  
11:50 4 very much.

11:50 5 THE COURT: Okay. Then I believe we're  
11:50 6 ready for your first preemptory challenge, Mr. Hill.

11:50 7 MR. HILL: Thank you, Your Honor. Our  
11:50 8 first preemptory challenge is Juror No. 15, Herbert  
11:50 9 Ronald Collins.

11:50 10 THE COURT: Herbert Ronald Collins. Okay.  
11:50 11 That's noted.

11:50 12 Mr. Reiter, we're to you.

11:50 13 MR. REITER: Yes, Your Honor.

11:50 14 THE COURT: This is like the NFL draft.  
11:50 15 Reiter, what position did he play for Texas? Go ahead,  
11:51 16 Mr. Reiter.

11:51 17 MR. REITER: Your Honor, our first strike  
11:51 18 is No. 7, Janet Wolfe.

11:51 19 THE COURT: No. 7, Janet Wolfe, is struck.  
11:51 20 We're back to you, Mr. Hill.

11:51 21 MR. REITER: Your Honor, our strike is  
11:51 22 Juror No. 8, Beverly Miller.

11:51 23 THE COURT: No. 8, Beverly Miller. Okay.  
11:51 24 To you, Mr. Reiter.

11:51 25 MR. REITER: Your Honor, our next strike

11:51 1 is No. 14, Mr. Whatley.

11:51 2 THE COURT: 14, Mr. Whatley. All right.

11:51 3 I don't get to enhance my music skills, I guess.

11:51 4 MR. REITER: I apologize, Your Honor.

11:52 5 THE COURT: Mr. Hill?

11:52 6 MR. HILL: Your Honor, our strike is Juror  
11:52 7 No. 5, Clarence Michael Walker.

11:52 8 THE COURT: No. 5, Clarence Michael  
11:52 9 Walker.

11:52 10 Mr. Reiter?

11:52 11 MR. REITER: Our last strike, Your Honor,  
11:52 12 is No. 4, Ricky Dean Orr.

11:52 13 THE COURT: Mr. Orr is struck.

11:52 14 By my count, we're done.

11:52 15 Are you in agreement, Mr. Hill?

11:52 16 MR. HILL: Yes.

11:52 17 THE COURT: Mr. Reiter, are you in  
11:52 18 agreement?

11:52 19 MR. REITER: Yes, Your Honor.

11:52 20 THE COURT: Then what I think we need to  
11:52 21 do is sign your papers and supply them here to the Court  
11:52 22 official.

11:54 23 Can we invite the jury pool back in the  
11:54 24 room? And we'll all rise for their entrance.

11:56 25 (Jury pool present.)

11:56 1 THE COURT: May I invite you to seat our  
11:56 2 jury.

11:56 3 THE CLERK: As I call your name, could you  
11:56 4 please come forward and take a seat in the jury box.  
11:56 5 Juror No. 1, the first name I will call will come up and  
11:56 6 go all the way down to the first seat on the first row.  
11:56 7 We'll seat six people on the first row, six people on  
11:56 8 the second row.

11:56 9 Gayle Anne McFarland, Carol Marie Wilson,  
11:56 10 Linda Sue Robertson, Misty Ryan, Sharon Kay Hebert or  
11:57 11 Hebert (Pronouncing), Willie Dean Hill.

11:57 12 The No. 7 juror, you go all the way down  
11:57 13 to the end on the second row. James L. Power, Jr.,  
11:57 14 Rhena Beth Nash, Frances Marie Drennen, L. David  
11:58 15 Stephenson, Ann Carol Bates, William C. Stabeno.

11:58 16 THE COURT: Mr. Power, Mr. Stephenson, Mr.  
11:58 17 Stabeno, the women have you outnumbered there.

11:58 18 You folks will have the honor to serve as  
11:58 19 our jury, and I need to take a moment and tell the  
11:58 20 entire jury pool that if it were up to me, I'd keep all  
11:59 21 of you. I've tried a lot of cases, and I've tried them  
11:59 22 all around the country because of the nature of my  
11:59 23 position, California, Michigan, New York, everywhere,  
11:59 24 and I've never had a jury pool that's been as exemplary  
11:59 25 as this one. I was very impressed with all of you. And

11:59 1 by the way, on the way out, you be sure to talk to him  
11:59 2 about your hazard pay, will you.

11:59 3 But I do want to thank all of you for  
11:59 4 being here, for being willing to serve, and you have  
11:59 5 served by your presence here and by your willingness to  
11:59 6 serve the citizens, and you're now excused with my great  
12:00 7 appreciation. Thank you.

12:00 8 (Remaining jury panel leaves courtroom.)

12:00 9 THE COURT: Now, ladies and gentlemen,  
12:00 10 we'll have a chance to get better acquainted over the  
12:00 11 next week, but you have very significant  
12:00 12 responsibilities. At this point, I'd like to ask our  
12:00 13 official to give you your oath.

12:01 14 COURT ROOM DEPUTY: Would you stand,  
12:01 15 please, and raise your right hand.

12:01 16 (Jurors sworn.)

12:01 17 THE COURT: Thank you, all of you. We're  
12:01 18 going to excuse you now. We're going to have lunch.  
12:01 19 You'll have an hour. Please be back promptly. You're  
12:01 20 the most important people in this room, and we can't  
12:01 21 start without all of you here. So you need to all be  
12:01 22 back, or we'll all wait until you get back.

12:01 23 Let me just -- I know you've had  
12:01 24 instructions, but let me remind you that there will be a  
12:01 25 time when you'll talk with each other at length about



12:02 1 the case, but that time isn't yet. You're not talking  
12:02 2 about anything that happens in this room yet, so just  
12:02 3 remember that as you go out together or alone or however  
12:02 4 you go to get you a little lunch. We'll see you then in  
12:02 5 an hour.

12:02 6 All rise for the jury.

12:03 7 Does counsel need me before lunch?

12:03 8 MR. HILL: I don't believe so, Your Honor.

12:03 9 MR. REITER: No, Your Honor.

12:03 10 THE COURT: Okay. I'll see you in an  
12:03 11 hour.

12 (Lunch recess.)

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CERTIFICATION.

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

\_\_\_\_\_  
DONNA COLLINS, CSR  
Deputy Official Court Reporter  
State of Texas No. 1086  
Expiration Date: 12/31/10

\_\_\_\_\_  
Date

\_\_\_\_\_  
GLENDA FULLER, CSR  
Deputy Official Court Reporter  
State of Texas No. 1042  
Expiration Date: 12/31/10

\_\_\_\_\_  
Date